TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~475.~~ 235

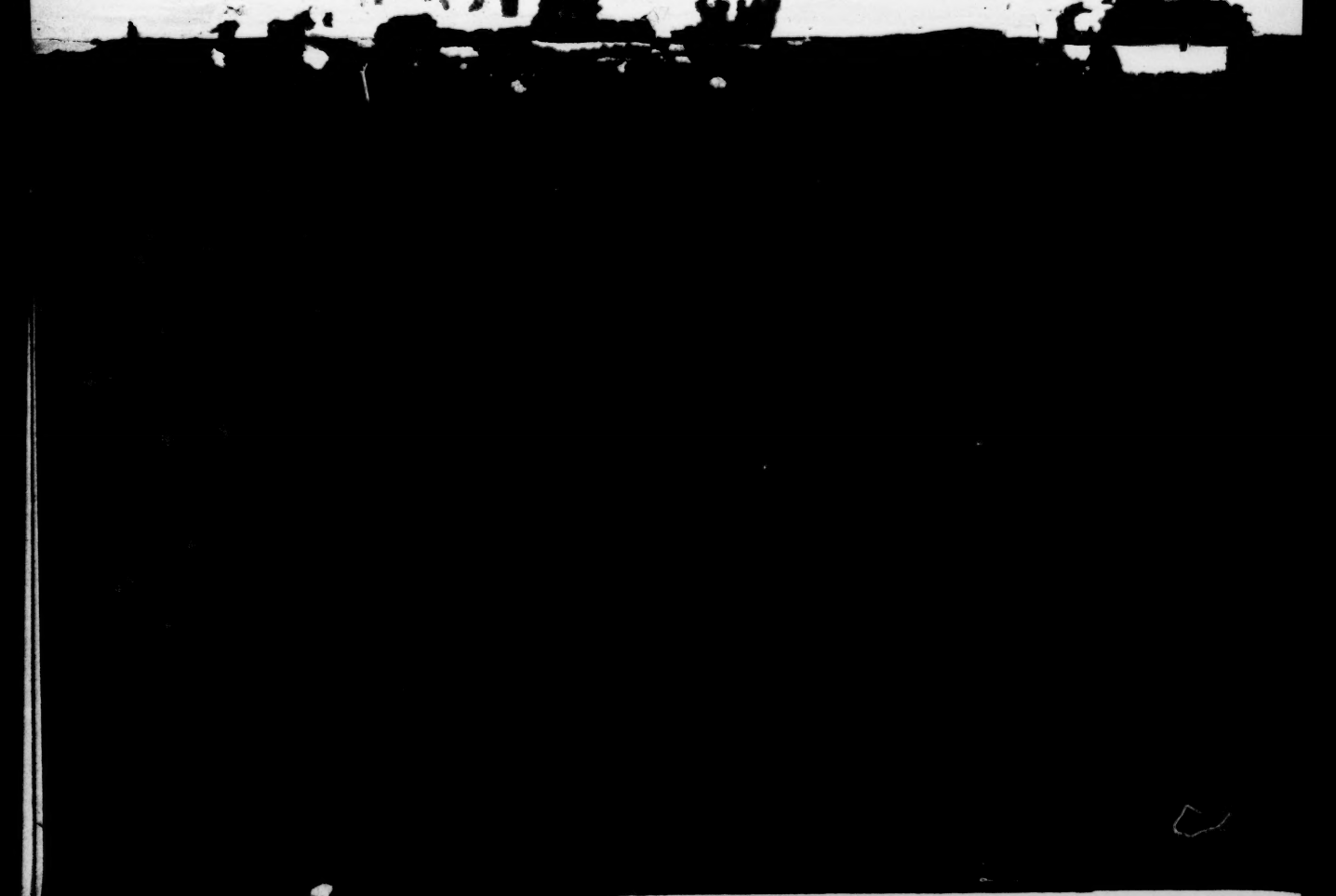
THE CITY COUNCIL OF CHARLESTON, STEPHEN THOMAS, AND GEORGE ADDISON, APPELLANTS,

vs.

THOMAS BRANCH, JOHN P. BRANCH, FREDERICK R. SCOTT, AND THOMAS P. BRANCH, AS BRANCH, SONS & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED DECEMBER 4, 1871.



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1 THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

At a circuit court of the United States for the fourth circuit in and for the district aforesaid, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, A. D. 1871, before the Honorable Hugh L. Bond and the Honorable George S. Bryan, judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

THOMAS BRANCH, A CITIZEN OF THE STATE of Virginia: John P. Branch, a citizen of the State of Virginia; Frederick R. Scott, a citizen of the State of Virginia; Thomas P. Branch, a citizen of the State of Georgia, copartners under the name of Branch, Sons & Company,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY, a corporation created by the laws of
2 South Carolina; The City Council of Charleston, a corporation created by the laws of South Carolina; Stephen Thomas, a citizen of the State of South Carolina, and George Addison, a citizen of the State of South Carolina.

Be it remembered that heretofore, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and seventy-one, the said Branch, Sons and Company impleaded the said city council of Charleston, the South Carolina Railroad Company, Stephen Thomas and George Addison, in a bill of complaint for injunction and relief, as follows:

3 *Subpœna.*

THE UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

The President of the United States of America to The City Council of Charleston, a municipal corporation created by the laws of South Carolina; Stephen Thomas, a citizen of the State of South Carolina; George Addison, a citizen of the State of South Carolina, and the South Carolina Railroad Company, a corporation created by the laws of South Carolina.

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the twentieth day of January next, twenty days after the service thereof, then and there true and perfect answer to make upon your corporal oath, on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Thomas Branch, a citizen of the State of Virginia; John P.
4 Branch, a citizen of the State of Virginia; Frederick R. Scott, a citizen of the State of Virginia; Thomas P. Branch, a citizen of

the State of Georgia, copartners under the name of Branch, Sons and Company.

And also that you do, on the rules-day next immediately after the day appointed and expressed, file, or cause to be filed, in the registry of said court, your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the fifth day of December, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fifth year of the sovereignty and independence of the United States of America.

MAGRATH & LOWNDES,
Complainants' Solicitors.

[SEAL.]

DAN'L HORLBECK,
Clerk C. C. U. S., S. C. Dist.

5 And L. E. Johnson, marshal of the said United States for the district aforesaid, returned said writ, endorsed as follows:

CHARLESTON, *Dec'm. 27th*, 1870.

I hereby certify that I executed the within process by serving the proper representatives of each corporation, viz, S. Thomas, D. T. Corbin, George Addison, on the 28th December, 1870.

W. D. HANNIFIN,
U. S. D. Marshal.

Service of copy acknowledged this 27th Dec., 1870.

D. T. CORBIN,
City Att'y.

Service acknowledged.

PORTER & CONNER,
Sol'ci's for S. C. R. R. Co.

6 In equity.

THE UNITED STATES OF AMERICA,
Fourth circuit, District of South Carolina:

To the honorable the judges of the circuit court for the said circuit:

The bill of complaint of Thomas Branch, a citizen of the State of Virginia; John P. Branch, a citizen of the State of Virginia; Frederick R. Scott, a citizen of the State of Virginia; Thomas P. Branch, a citizen of the State of Georgia, copartners under the name of Branch, Sons and Company, against The South Carolina Railroad Company, a corporation created by the laws of South Carolina; The City Council of Charleston, a municipal corporation created by the laws of South Carolina; Stephen Thomas, a citizen of the State of South Carolina, and George Addison, a citizen of the State of South Carolina, showeth:

1. Your orators are the bona-fide owners of shares of the capital stock of the South Carolina Railroad Company.

2. The said company was incorporated in December, anno
7 Domini eighteen hundred and thirty-five, under the name of the Cincinnati and Charleston Railroad Company. In the year of

our Lord eighteen hundred and thirty-seven, the name of the company was changed to the Louisville, Cincinnati and Charleston Railroad Company. In December, anno Domini eighteen hundred and forty-three, this name was changed to the South Carolina Railroad Company.

3. In December, anno Domini eighteen hundred and twenty-seven, the South Carolina Canal and Railroad Company had been duly incorporated by an act of the general assembly of South Carolina.

4. By an act of the said general assembly in December, anno Domini eighteen hundred and forty-three, it was provided that, whenever the written consent of the stockholders of the said South Carolina Canal and Railroad Company should be obtained, the said last-named company should be merged in the said South Carolina Railroad Company, and thereupon all the rights, privileges, and property of the South Carolina Canal and Railroad Company should be vested in the South Carolina Railroad Company, and the latter company should be liable for all the debts of the former. The said consent has been obtained, and long previous to the first day of January, anno Domini eighteen hundred and seventy, the South Carolina Canal and Railroad Company has been merged into the South Carolina Railroad Company, and the rights, privileges, and property of the former company has become vested in the latter.

5. The Cincinnati and Charleston Railroad Company, now the South Carolina Railroad Company, was, when created by the act of anno Domini eighteen hundred and thirty-five, declared to have corporate existence "in perpetuity."

6. By the forty-third section of the said act it was further declared "that the capital stock in said company, the dividends thereon, all the property, real and personal, belonging to the said company, should be forever exempt from taxation in each and every of the States of South Carolina, North Carolina, Tennessee, and Kentucky; and it shall not be lawful for either of the said States or any corporation, municipal, police, or other authority thereof, or of any town, city, or district thereof, to impose any tax on such stock or dividends, property, or estate: provided, that the said stock or dividends, when the said dividends shall exceed the legal interest of the State, may be subject to taxation by the State in common with other money at interest and interest thereon."

7. The said act is a part of the charter of the South Carolina Railroad Company, and constitutes a contract between the State of South Carolina and the said South Carolina Railroad Company.

8. The general assembly of South Carolina, by an act passed on the first day of March, anno Domini eighteen hundred and seventy, declared that all property, real or personal, situate within the limits of municipal corporations shall be liable to taxation by such corporations. In pursuance of the authority pretended to be granted by this last-mentioned act, the said city council of Charleston, by an ordinance duly passed, has imposed, for the year eighteen hundred and seventy, a tax of eighty-six hundred and forty-eight dollars on the property of the South Carolina Railroad Company situate in the city of Charleston, and has issued execution against the said property through the aforesaid Stephen Thomas, the treasurer of the said city, and is threatening to levy the said tax through the aforesaid George Addison, the sheriff of the said city. The said city council of Charleston is also threatening to levy a large sum against the said South Carolina Railroad Company by way of penalty upon it for not making return of its said property and paying the said tax.

9. The said act of the first day of March, anno Domini eighteen hundred and seventy, is in violation of so much of the constitution of
11 the State of South Carolina as declares "that the general assembly shall require that all the property, except that heretofore exempted, within the limits of municipal corporations, shall be taxed for the payment of debts contracted under authority of law." It is equally in violation of the twenty-first section of the first article of the same constitution, which declares that no law impairing the obligation of contracts shall ever be enacted. It is equally in violation of that clause of the Constitution of the United States which forbids any State to pass any law impairing the obligation of contracts. The said ordinance of the city council of Charleston, under the pretended authority of the said act, is therefore contrary to law and void.

10. The wrong and injury so attempted to be done is a wrong and injury to your orators and all other stockholders of the South Carolina Railroad Company who have become owners of the said stock on the faith of the said contract between the State of South Carolina and the
12 said South Carolina Railroad Company exempting the property of the latter from taxation. Your orators have applied to the president and directors of the said company to resist, by legal steps, the enforcement of the said tax, but the said president and directors refuse and neglect to do so, and allege that, under the laws of South Carolina, they have no legal remedy whereby to relieve the said wrong and injury to your orators and the other stockholders of the said South Carolina Railroad Company.

11. All of the said actings and doings of the said City Council of Charleston, of the said Stephen Thomas, and of the said George Addison, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators, who are remediless in the premises, save in this honorable court, where such matters are properly cognizable.

To the end, therefore, that the said defendants may true, direct, and perfect answer make to all and singular the premises, and that the said City Council of Charleston, the said Stephen Thomas, and the said George Addison may be restrained and enjoined
13 from enforcing, by execution or any other process or in any manner, the said tax and penalty or either, and that the said South Carolina Railroad Company may be enjoined and restrained from paying the said tax or penalty, or either or any part of either, to the said city council of Charleston, or its said officers, and that your orators may have such other and further relief in the premises as to your honors shall seem meet, may it please your honors to grant unto your orators not only your writ of injunction, restraining the said defendants touching the premises, but also your writ or writs of subpœna, directed unto the said city council of Charleston, the said Stephen Thomas, city treasurer; the said George Addison, city sheriff, and the said South Carolina Railroad Company, commanding them, and each and every of them, at a certain day, and under a certain penalty to be therein named, to be and appear before your honors in this honorable court, then and there true, direct, and perfect answer to make to all and singular the premises, and to abide and perform such further order and decree as to *as to* your honors shall seem meet. And your orators will ever pray, and so forth.

MAGRATH & LOWNDES,
Compl'ts' Solic'rs.

14 And on the third day of January, A. D. 1871, came into court

the said Branch, Sons and Company, by Magrath & Lowndes, their solicitors, and moved for a temporary injunction; which motion was duly granted, and an order in words and of the tenor following was made.

Order.

In the circuit court U. S., fourth circuit, South Carolina district.

BRANCH, SONS & CO.
vs.
THE CITY COUNCIL OF CHARLESTON ET AL.

On hearing the bill read in this case with the affidavit of the complainants and other papers submitted, it is ordered that the writ of injunction as prayed for in the bill do forthwith issue directed to the defendants, The City Council of Charleston, George Addison, sheriff for the city of Charleston, and Stephen Thomas, city treasurer for the city of Charleston, prohibiting them, or any or either of them, from proceeding, by distress or execution, or in any other manner whatsoever, to assess, impose, or collect any tax upon the capital stock of the South Carolina Railroad Company, or the dividends thereon, or the property and estates, real and personal, belonging to the said South Carolina Railroad Company, professed to be assessed or collected under
15 any act or acts of the legislature of the State of South Carolina directing the assessment and collection of such tax. And that the South Carolina Railroad Company be also prohibited from consenting to pay and from paying such tax to the parties above named, or any or either of them, and that such injunction do continue of force until the coming in of the answers of the several parties defendants, and the further order of the court.

GEO. S. BRYAN,
U. S. Judge, Dist. of So. Ca.

Writ of injunction.

The United States of America to The City Council of Charleston, George Addison, and Stephen Thomas.

Whereas, in a suit now pending in the circuit court of the United States for the State of South Carolina between Branch, Sons & Company, complainants, and the City *City* Council of Charleston and
16 others, defendants, it has been ordered that a writ of injunction do issue forthwith, prohibiting the said South Carolina Railroad Company from consenting to pay or from paying to the City Council of Charleston, George Addison, city sheriff of Charleston; Stephen Thomas, city treasurer for the city of Charleston, or to any or either of them, any tax imposed or assessed upon the capital stock of the South Carolina Railroad Company, or the dividends thereon, or the property and estates, real and personal, belonging to the said South Carolina Railroad Company professed to be assessed or collected under any act or acts of the legislature of the State of South Carolina directing the assessment and collection of such tax; and whereas it has been further ordered that such injunction shall continue of force until the coming in of the answers of the several parties defendants, and the further order of the court:

Now, therefore, in pursuance and execution of the order hereinbe-

fore recited, you, the City Council of Charleston, George Addison, city sheriff of Charleston; Stephen Thomas, city treasurer for the city of Charleston, are prohibited from proceeding, by distress or execu-
17 tion, or in any other manner whatsoever, to assess, impose, or collect any tax upon the capital stock of the South Carolina Railroad Company, or the dividends thereon, or the property and estates, real and personal, belonging to the said South Carolina Railroad Company, professed to be assessed or collected under any act or acts of the legislature of the State of South Carolina directing the assessment and collection of such tax, and that such injunction do continue of force until the coming in of the answers of the several parties defendants, and the further order of the court.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Charleston, on the third day of January, A. D. 1871, and in the year of the independence of the United States of America the ninety-fifth.

MAGRATH & LOWNDES,
Compl'ts' Solicitors.
DAVID HORLBECK,
C. C. C. U. S. for S. C.

Service of a copy of the above writ acknowledged this fourth day of January, A. D. 1871.

D. T. CORBIN,
Solicitor for the City Council of Charleston, et al, Def'd'ts.

18 The United States of America to the South Carolina Railroad Company:

Whereas, in a suit now pending in the circuit court of the United States for the State of South Carolina between Branch, Sons & Company, complainants, and The City Council of Charleston and other defendants, it has been ordered that a writ of injunction do issue forthwith, prohibiting the said South Carolina Railroad Company from consenting to pay, or from paying, to the City Council of Charleston, George Addison, city sheriff of Charleston; Stephen Thomas, city treasurer for the city of Charleston, or to any or either of them, any tax imposed or assessed upon the capital stock of the South Carolina Railroad Company, or the dividends thereon, or the property and estates, real and personal, belonging to the said South Carolina Railroad Company, professed to be assessed or collected under any act or acts of the legislature of the State of South Carolina directing the assessment and collection of such tax;

19 And whereas it has been further ordered, that such injunction shall continue of force until the coming in of the answers of the several parties defendants, and the further order of the court:

Now, therefore, in pursuance and execution of the order hereinbefore recited, you, the South Carolina Railroad Company, are hereby strictly enjoined and prohibited from consenting to pay, or from paying, until the answers of the several parties defendants in this cause shall come in, and until the further order of the court, to the city council of Charleston, George Addison, city sheriff of the city of Charleston; Stephen Thomas, city treasurer for the city of Charleston, or to any or either of them, any tax imposed or assessed upon the capital stock of the South Carolina Railroad Company, or the dividends thereon, or the property or estates, real or personal, belonging to the said South Carolina Railroad Company, professed to be assessed or collected under any act or acts of

the legislature of South Carolina directing the assessment or collection of such tax.

20 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Charleston, on the third day of January, A. D. 1871, and in the year of the independence of the United States of America the ninety-fifth.

MAGRATH & LOWNDES,
Compl'ts' Solicitors.
DANIEL HORLBECK,
C. C. C. U. S. for So. Ca.

Service of a copy of the above writ accepted this fourth day of January, 1871.

PORTER & CONNER,
Sol'c'rs S. C. R. R. Co.

21 And on the fifteenth day of March, 1871, came into court the said City Council of Charleston, Stephen Thomas, and George Addison, by D. T. Corbin, their solicitor, and to the bill of complaint of the said complainants filed their answer, in words and of the tenor following:

22 THE UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

THOMAS BRANCH, A CITIZEN OF THE STATE OF Virginia; John P. Branch, a citizen of the State of Virginia; Frederick R. Scott, a citizen of the State of Virginia; Thomas P. Branch, a citizen of the State of Georgia, copartners under the name of Branch, Sons and Company,	
vs.	In equity.
THE SOUTH CAROLINA RAILROAD COMPANY. A corporation created by the laws of South Carolina, The City Council of Charleston, a corporation created by the laws of South Carolina; Stephen Thomas, a citizen of the State of South Carolina, and George Addison, a citizen of the State of South Carolina.	

The joint and several answers of The City Council of Charleston, Stephen Thomas, and George Addison, three of the defendants to the bill of complaint of the said Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch.

These defendants, respectively, now and at all times hereafter
23 saving and reserving to themselves all right of exception to the said bill of complaint, for answer thereto, say:

I. That they do not admit that said complainants are the bona-fide owners of the shares of capital stock in the South Carolina Railroad Company, and they pray strict proof thereof.

II. They admit that the Cincinnati and Charleston Railroad Company was incorporated by the laws of the State of South Carolina, December 19, 1835; that the name of said company was changed by act of general assembly of said State, December 21, 1836, (and not in 1837, as stated in said bill of complaint,) to the Louisville, Cincinnati and Charleston

Railroad Company, and that, on the 19th day of December, 1843, the name of the said Louisville, Cincinnati and Charleston Railroad Company was changed to the South Carolina Railroad Company. They further admit that in December, 1827, the South Carolina Canal and Railroad Company was incorporated by an act of the general assembly of South Carolina. They further admit that by the acts of De-
24 cember, 1843, changing the name of said Louisville, Cincinnati and Charleston Railroad to the South Carolina Railroad Company provision was made for merging the said South Carolina Canal and Railroad Company in the said South Carolina Railroad Company, and that, prior to the year 1870, the said South Carolina Canal and Railroad Company had been merged, with all its rights, privileges, and property, in the said South Carolina Railroad Company, and that the rights, privileges, and property of the former company had become vested in the latter company.

III. They admit that the Cincinnati and Charleston Railroad Company was, when created by the said act of 1835, declared to have corporate existence "in perpetuity when formed," and that, by the 43d section of said act, it was declared that the capital stock in the said company, the dividends thereon, and all the property, both real and personal, of said company, should be forever exempt from taxation, as alleged in said complainants' bill.

IV. They admit the taxation of the real property of said South
25 Carolina Railroad Company by the said city council for the year 1870, and that execution has issued against the property of said company through Stephen Thomas, one of these defendants, as alleged in said complainants' bill, and say that George Addison, another of these defendants, has proceeded, as city sheriff of said city, to levy the said tax.

V. These defendants say that, by the first section of the act of general assembly entitled "An act to incorporate the Cincinnati and Charleston Railroad Company," it is declared that, "for the purpose of establishing a communication by railroad between the cities of Cincinnati, in the State of Ohio, and Charleston, in the State of South Carolina, through the States of Kentucky, Tennessee, North Carolina, and South Carolina, the formation of said company was authorized. The rights, powers, and privileges granted by said act, and by other acts amend-
atory thereof, are all given to said company for the purpose of
26 establishing communication by railroad between the cities of Cincinnati and Charleston. The property it acquires it must acquire for this purpose, to enable the company to claim the privileges conferred on it by its charter. And these defendants say that the said South Carolina Railroad Company has not, for many years last past, if at all, exercised any of the rights conferred on it by the said charter of the said Louisville, Cincinnati and Charleston Railroad Company for the purpose of establishing a communication by railroad between the said cities of Charleston, Louisville, and Cincinnati; but to establish such communication, or to attempt to establish it, they believe the said company has thus far wholly neglected and failed to do, and by such neglect and failure has violated the fundamental condition of its said charter, which condition was and is that said company should establish communication by railroad between the said cities of Charleston, Louisville, and Cincinnati; and these defendants submit that, by reason
27 of such violation, the said South Carolina Railroad Company ought not to be allowed to extend the vast powers and privileges claimed to have been secured to the Louisville, Cincinnati and Charles-

ton Railroad Company for the express purpose specified by its charter of incorporation over the said railroad built by the South Carolina Canal and Railroad Company, under authority of said charter, for another and totally different purpose, namely, for the purpose of connecting by a railroad the city of Charleston with the towns of Hamburg, Columbia, and Camden; and the rights, privileges, and immunities granted to the said Louisville, Cincinnati and Charleston Railroad Company are not rights, privileges, and immunities, secured to the South Carolina Railroad Company in relation to the said railroad built by and under the charter of the South Carolina Canal and Railroad Company. And they submit that when the said South Carolina Railroad Company,
28 under the act of 1843 before cited, was allowed to acquire possession of the South Carolina Canal and Railroad Company, it did not acquire any greater rights, powers, and privileges, so far as the railroad connecting Charleston with Hamburg, Columbia, and Camden is concerned, than were conferred on the said South Carolina Canal and Railroad Company by its charter of incorporation and the acts amendatory thereof. Among the rights, powers, and privileges secured to the South Carolina Railroad Company by the union therewith of the South Carolina Canal and Railroad Company were the following: The right to construct a canal or a railroad, or a canal and a railroad, from the city of Charleston to each of the towns of Columbia, Camden, and Hamburg; the exclusive right to make, keep up, and use the said railroad for the term of thirty-six years; the right, after the said term of thirty-six years shall have elapsed, to remain and be incorporated and vested with all the estate, powers, and privileges, as to their ownership,
29 granted and secured by the act entitled "An act to amend an act entitled 'An act to authorize the formation of a company for constructing railroads or canals from the city of Charleston to the towns of Columbia, Camden, and Hamburg,'" ratified the 30th day of January, 1828; and the privilege of exemption from taxation of the stock of the company and the real estate that may be purchased by them, and connected with and subservient to the works authorized by their charter, and the act amendatory thereof, hereinbefore recited, for the first period of thirty-six years of its corporate existence. The said first period of thirty-six years of the corporate existence of said company expired before the years 1870; and these defendants are informed and believe that the real estate of the said South Carolina Railroad Company acquired within the limits of the city of Charleston, under and by virtue of the charter of the South Carolina Canal and Railroad Com-
30 pany, is not, nor has it been since the said period expired, exempted from taxation because of the provisions of the 43d section of the act to incorporate the Cincinnati and Charleston Railroad Company, as claimed by said complainants in their said bill of complaint.

VI. And these defendants are advised and submit that the real estate of the said South Carolina Railroad Company, situate within the corporate limits of the said city of Charleston, has all been acquired, and has been, and is now, held by said company under the authority of the act of general assembly above cited, incorporating the South Carolina Canal and Railroad Company, and the acts amendatory thereof, and not under the authority of the act of general assembly incorporating the Cincinnati and Charleston Railroad Company, and the acts amendatory thereof; and whatever rights, powers, and privileges are vested in the said South Carolina Railroad Company to make, keep up, and use the railroads and transportations authorized to be constructed be-
31 tween the city of Charleston and the towns of Columbia, Cam-

den, and Hamburg, are derived from, and are to be governed by, the provisions contained in the said acts of incorporation of the said South Carolina Canal and Railroad Company.

VII. These defendants further say that the South Carolina Railroad Company is subject to the provisions of the third section of the act of general assembly entitled "An act to change the name and style of the Louisville, Cincinnati and Charleston Railroad Company, and to provide for uniting therewith the South Carolina Canal and Railroad Company," &c., ratified the 19th day of December, 1843, which are that "the said South Carolina Railroad Company is hereby excepted from the provisions of the forty-first section of an act entitled 'An act to incorporate certain villages, societies, and companies, and to renew and amend certain charters heretofore granted, and to establish the principal on
32 which charters of incorporation will hereafter be granted, ratified on the 17th day of December, in the year of our Lord one thousand eight hundred and forty-one; but nothing herein contained shall be construed as exempting the said company from the provisions of the said forty-first section upon any future, grant, renewal, or modification of their charter." And the said forty-first section of the said act of December 17, 1841, is as follows: "That it shall become part of the charter of every corporation which shall, at the present or any succeeding session of the general assembly, receive a grant of a charter or any renewal, amendment, or modification thereof, (unless the act granting such charter, renewal, amendment, or modification shall in express terms except it;) that every charter of incorporation granted, renewed, or modified, as aforesaid, shall, at all times, remain subject to amendment, alteration, or repeal by the legislative authority." And these defendants say that the said South Carolina Railroad Company has had amendments and modifications of its charter by the following-named
33 acts of the general assembly, which said acts did not, in express terms, except the charter of said company from the legislative authority of amendment, alteration, or repeal, namely:

1. "An act to lend the credit of the State to secure certain bonds to be issued by the South Carolina Railroad Company, and for other purposes," passed December 21, 1865. (Acts of 1865, p. 104.)

2. An act to amend the act last aforesaid, passed the 19th day of September, 1866. (St. at Large, vol 13, p. 377.)

And they are advised and submit that, by the provisions of the said third section of the act of December 19, 1843, hereinbefore at length recited, the charter of the said South Carolina Railroad Company became, on the 21st day of December, 1865, and has since remained, subject to amendment, alteration, or repeal by the legislative authority.

VIII. These defendants do further say that they are advised and believe that the contract', alleged by the complainants to have been
34 entered into between the State of South Carolina and the said South Carolina Railroad Company, by virtue of which the property of said company is forever exempted from municipal taxation, never existed; but they believe that the contract between the said State and the said company, by which the property of the latter was exempted from municipal taxation, was for a limited period merely, and dependent upon a certain condition, and was so regarded by said company and the holders of shares of the capital stock thereof; and the condition of said contract was and is that, if the said company should have any grant, renewal, or modification of its charter, by act of the general assembly, its charter should thereupon and thereafter be subject to the provisions of said forty-first section of said act of December 17, 1841, unless the act

making such grant, renewal, or modification expressly excepted said charter from the provisions of said forty-first section. The said condition was of force at the time of the adoption of the constitution of said State.

35 IX. And these defendants are advised and submit that the first period of thirty-six years, during which, under the charter of the South Carolina Canal and Railroad Company, the capital stock and property of said company acquired subject to the provisions of its said charter, having expired previous to the year 1870, and the said South Carolina Railroad Company having become, on the 21st day of December, 1865, subject to the provisions of the said forty-first section of the act of December 17, 1841, as hereinbefore stated, the act of the general assembly of the State of South Carolina passed on the first day of March, 1870, declaring that all property, real and personal, situate within the limits of municipal corporations shall be liable to taxation by such corporations, as stated in said complainants' bill, applies to the property of the South Carolina Railroad Company situate within the corporate limits of said city of Charleston, and the ordinances of said city making

36 assessments on the said South Carolina Railroad Company for the property owned by it within the limits of said city, passed in pursuance of the authority conferred on the said city council of Charleston by its charter of incorporation, granted the 13th day of August 1783, and, in obedience to said act of March 1, 1870, are lawful and valid, and are not in violation of the constitution of the said State, or of the United States.

X. And these defendants say that, on the 22nd day of March, 1870, the city council of Charleston ratified an ordinance entitled "An ordinance to raise supplies for the fiscal year ending December 31st, 1870," the first and second sections of which are as follows:

"SEC. 1. That the city appraiser is hereby authorized to assess a tax of two cents upon the dollar of the value of all real and personal property in the city of Charleston for the purpose of meeting the expences of the city government for the current fiscal year.

"SEC. 2. The taxes assessed under this ordinance, except such

37 as are otherwise directed, shall be payable in three equal parts: one part on or before the tenth day of April next; another part on or before the last day of June next; and the third part on or before the last day of September next."

Under the authority of the said ordinance the city council of Charleston, by the city appraiser, assessed a tax of two cents upon the dollar of the value of the real property of the South Carolina Railroad Company in the city of Charleston, amounting to seven thousand three hundred and eighty-five dollars, (and not eighty-six hundred and forty-eight dollars, as stated in said complainants' bill,) notice of which tax was duly given to the proper officers of the said company, and payment thereof was demanded; but neither the said tax or any part thereof was paid at the time or times required by the provisions of the ordinance aforesaid. The said taxes not having been paid to the said

38 Stephen Thomas, city treasurer, as required by the ordinance of the said city, he thereupon added a penalty of twenty per cent. thereon, as required by the 43d section of an ordinance of the said city council, entitled "An ordinance to provide for the assessment and taxation of property," ratified the 10th day of February, 1870, which section is in words as follows, to wit: "Sec. 43. When the taxes, assessments, and penalties charged against any parcel or lot of real or personal property shall not be paid on or before the day prescribed by ordinance, a pen-

alty of twenty per cent. thereon shall be added by the city treasurer; and if the said taxes and penalty shall not be paid within thirty days next thereafter, or collected by distress, or otherwise, the penalty and said taxes shall be treated as the delinquent taxes on such real or personal property, to be collected in the manner that is or may be prescribed by law; and if the amount of such delinquent taxes, assessments, and penal-
39 ties shall not be paid within thirty days next thereafter, the delinquent taxes, assessments, and penalties of the current year shall be due and collected by the sale of such real or personal estate in the manner that is or may be required by law"—and certified the said tax, and the penalty added by him thereto, to the said George Addison, city sheriff, who thereupon proceeded to collect the same, as required by the 48th section of the ordinance last aforesaid, which section is in words as follows, to wit: "Sec. 48. When the taxes and assessments charged against any party or property on the property-return shall not be paid on or before the day prescribed by ordinance, or where the remainder of such taxes and assessments shall not be paid on or before the day prescribed by ordinance thereafter, together with the penalty on such remaining unpaid, the city sheriff, to whom the same shall be certified by the city treasurer, shall proceed to collect the same, by distress or otherwise, as may at the time be prescribed by law, together with a
40 penalty of five per cent. on the amount so delinquent, which penalty shall be for the city sheriff, as a compensation for making such collection, together with a penalty of five per cent. on the amount so delinquent, as a compensation for makeing such collection." And these defendants say that the said tax was assessed on the real property of said company only, as the said company has never made a return of its personal property for taxation, nor has the city appraiser made a return of such personal property for them, as he is by ordinance of city council permitted to do. And these defendants say that they are advised and submit that all their actings and doings in the assessment and taxation of the property of said South Carolina Railroad Company as herein stated, and in the steps which have successively been taken to secure the payment of the same, together with the penalties laid thereon for non-payment, are in strict conformity to law, and ought not to be enjoined or restrained by this honorable court.

And these defendants, respectively, deny that there is any
41 other matter or thing in said complainant's bill of complaint material or necessary for these defendants to make answer unto, not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied; and the matters and things herein set forth, these defendants are ready and willing to aver and prove, as this honorable court shall direct; and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

D. T. CORBIN,
Defendant's Solicitor.

STATE OF SOUTH CAROLINA,
City and County of Charleston, ss:

Personally appeared before me, Stephen Thomas, treasurer of the city of Charleston, and one of the defendants who make the foregoing answer, and, being duly sworn, says that the matters and things therein set forth are true to the best of his knowledge and belief.

S. THOMAS,
City Treasurer.

Sworn to before me the 14th day of March, 1871.

WILLIAM STONE,
Notary Public.

42 And on the 5th day of April, 1871, the said South Carolina Railroad Company, by Porter & Conner, their solicitors, file in the said court their answer to the said bill of complaint, in words and of the tenor following:

THE UNITED STATES OF AMERICA.
District of South Carolina:

To the honorable the judges of the circuit court of the United States of the district of South Carolina, sitting in equity:

The answer of the South Carolina Railroad Company, a body corporate in and of the State of South Carolina, to the bill of complaint of Thomas Branch, John T. Branch, Frederick R. Scott, citizens of the State of Virginia, and Thomas P. Branch, a citizen of the State of Georgia, copartners in trade under the name and firm of Branch, Sons & Co.

This defendant, reserving to itself all right of exception to the said bill of complaint, for answer, nevertheless, thereto, saith:

That, by act of the general assembly of the State of South Carolina, ratified the 19th day of December, 1827, a corporate company was authorized for the construction of a railroad, or a canal, or a canal and railroad, from the city of Charleston to each of the towns of Columbia, Camden, and Hamburg.

That, by act of the general assembly of the State of South
43 Carolina, ratified the 30th day of January, 1828, the foregoing act was amended, and the South Carolina Canal and Railroad Company was incorporated, with power to construct a railroad between Charleston and the Savannah River, at or near Hamburg, and with power and authority to construct branches thereof to Columbia and Camden, and with all the powers, rights, and privileges necessary for the successful completion and operation of said road and its branches, as will appear by reference to said act.

That, in pursuance of the power thus granted, the South Carolina Canal and Railroad Company was duly organized, the capital stock subscribed for and paid up, and a railroad built from Charleston to Hamburg.

That, by act of the general assembly of the State of South Carolina, ratified on the 19th day of December, 1835, the Cincinnati and Charleston Railroad Company was incorporated, "for the purpose of establishing a communication by railroad between the cities of Cincinnati, in Ohio, and Charleston, in the State of South Carolina;" that said
44 charter was in perpetuity; that the capital stock of said company was subscribed for and paid in, and the charter accepted, and the company duly organized in pursuance thereof, and all acts and things necessary to be done on the part of said company to obtain and secure the benefits of said act of incorporation were duly and truly performed.

That, by act of the general assembly of the State of South Carolina ratified the 21st day of December, 1836, the name of the corporation was changed from "the Cincinnati and Charleston Railroad Company,

to the "Louisville, Cincinnati and Charleston Railroad Company;" and by act of the general assembly of the State of South Carolina, ratified the 19th day of December, 1843, the name of the corporation was again changed from the "Louisville, Cincinnati and Charleston Railroad Company" to the "South Carolina Railroad Company."

That, on or about the day of 1837, this defendant, then called The Louisville, Cincinnati and Charleston Railroad Company, after negotiation had with the South Carolina Canal and Railroad Com-
45 pany and the stockholders thereof, purchased the capital stock of the South Carolina Canal and Railroad Company, and thereby became the owners of all the estate, property, track, road-bed, and machinery of the said Canal and Railroad Company, and of all the rights and privileges of said company; and thereupon the Louisville, Cincinnati and Charleston Railroad Company made and constituted the track from Charleston to Branchville, the "main stem" of its road, and extended the same to Columbia, in pursuance of its power and duty under the charter to establish communication by railroad between the cities of Charleston and Cincinnati. And the purchase by this defendant, then called The Louisville, Cincinnati and Charleston Railroad Company, of the property, rights, and privileges of the Canal and Railroad Company, and the conversion of the same to its use, under its charter, were with the assent and approval of the general assembly of the State of South Carolina.

That the general assembly of the State of South Carolina, on the 20th day of December, 1842, ratified an act entitled "An act
46 to unite the South Carolina Canal and Railroad Company and the Louisville, Cincinnati and Charleston Railroad Company into one corporation," but as said act contained no provision excepting said corporation from the operation of the 41st section of the act of 1841, the said corporation declined to accept the same. And on the 19th day of December, 1843, an act was ratified by the general assembly of the State of South Carolina, under and by virtue of which the name of the Louisville, Cincinnati and Charleston Railroad Company was changed to the South Carolina Railroad Company; and in and by said act it was further provided: "That whenever the written consent of all the stockholders of the South Carolina Canal and Railroad Company shall have been obtained, the said South Carolina Canal and Railroad Company shall be merged in the said South Carolina Railroad Company, and thereupon and thereafter all the rights, privileges, and property belonging to the said South Carolina Canal and Railroad Company shall be vested in the said South Carolina Railroad Company, and the said South
47 Carolina Railroad Company shall be liable for all the debts and contracts of the said South Carolina Canal and Railroad Company, and the stock and property of the said South Carolina Railroad Company shall be subject to the same liens and charges to which the stock and property of the said South Carolina Canal and Railroad Company may be liable, and in the same relative order in which the said liens and charges now stand."

And in and by said act of 1843, and in all other acts thereafter passed relating to said corporation, the said corporation is expressly excepted from the provisions of the 41st section of the act of 1841, which provides that every charter of incorporation thereafter granted, renewed, or modified (unless the act granting such charter, renewal, amendment, or modification shall in express terms except it) shall at all times remain subject to amendment, alteration, or repeal by the legislative authority.

And the defendant further shows to the court that, by the 19th section of the charter of the South Carolina Railroad Company, it was
48 provided: "That the said company may construct branches of their road: *Provided*, Said branches shall not conflict with any chartered rights existing at the time of their construction: *And provided*, That they shall be attended with no exclusive privileges, except the exclusive right of transportation of goods, wares, merchandise, produce, and persons thereon, subject to the rates hereinafter mentioned."

That, by act of the general assembly ratified the 18th day of December, 1844, the South Carolina Railroad Company was authorized to open a subscription for new stock in the capital of said company, to be employed in the construction of a branch of their railroad to the town of Camden; that the said subscription was opened and the stock subscribed for and the road constructed to Camden.

That, by the 32d section of the charter of the South Carolina Railroad Company, it was provided: "That the said company may purchase, have, and hold, in fee or for a term of years, any lands, tenements, or hereditaments which may be necessary for the said road
49 or any branch or appurtenance thereof, or for the erection of depositories, store-houses, houses for the officers, servants, or agents of the company, or for work-shops or foundries, to be used for the said company, or for procuring timber, stone, or other materials necessary to the construction of the road, its branches, or appurtenances, or for effecting transportation thereon, and for no other purpose whatever."

And that, by the 43d section of the charter, it was provided: "That the capital stock in the said company, the dividends thereon, and all the property and estates, real and personal, belonging to the said company, shall be forever exempt from taxation in each and every of the said States of South Carolina, North Carolina, Tennessee, and Kentucky; and it shall not be lawful for either of the said States, or any corporate, municipal, police, or other authority thereof, or of any town, city, county, or district thereof, to impose any tax on such stock or dividends, property or estates: *Provided*, That the said stock or dividends, when the said dividends shall exceed the legal interest of the State, may be subject to taxation by the State in common with other money
50 at interest and interest thereon."

And the defendant further shows to the court that at no time since its incorporation has any tax or assessment been laid by any State or municipal authority on the real or personal property of said corporation, but that the entire exemption of said corporation from taxation on its real and personal property has been uniformly conceded by the State and all municipal bodies.

And the defendant further shows to the court that, notwithstanding it has done and performed all things by it to be performed according to its charter, and has and holds only such property, real and personal, as it is by its charter entitled and authorized to have and hold, and notwithstanding the provision in the charter of said company that the capital stock, the dividends thereon, and all the property and estate, real and personal, belonging to said company shall be forever exempt from taxation, and that it shall not be lawful for any corporate, municipal, police, or other authority of the State of South Carolina, or of any town, city, county, or district thereof, to impose any tax on such stock
51 or dividends, property, or estates, the city council of Charleston, a municipal corporation of the State of South Carolina, has assessed and levied a tax on the capital stock and property, real and personal, of the defendants, to the amount of $, and has issued

a tax-execution for the collection of said amount, and placed the same in the hands of George Addison, sheriff of the city of Charleston, for collection, and that the said George Addison is about to levy on and sell the real and personal property of the defendant for the payment of said tax; all which proceedings, done and contemplated, are in violation of the chartered rights of the defendant.

And defendant further shows to the court that the said city council of Charleston allege and pretend that the authority to assess and collect said tax is given to it by the act of the legislature passed since the adoption of the constitution of the State in 1865, whereas defendant respectfully submits to the court that all such acts, under which authority to tax the property of the defendant is claimed, are in
52 violation of the constitution of the State, and in violation of the Constitution of the United States, Art. 1, § 10, which provides that no State shall pass any law impairing the obligation of contracts; and that all proceedings by the said city council are illegal and void.

Wherefore defendant prays to be hence dismissed, with its costs and charges in this behalf sustained.

PORTER & CONNER,
Defendant's Solicitors.

53 And, on the thirty-first day of March, 1871, the said complainants came again into court by Magrath and Lowndes, their solicitors, and to the aforesaid answers of the said defendants they filed their replication, in words and of the tenor following:

54 In the circuit court, in equity.

THE UNITED STATES OF AMERICA,
District of South Carolina:

BRANCH, SONS & COMPANY
vs.
THE CITY COUNCIL OF CHARLESTON.

The replication of Branch, Sons and Company, the complainants, to the answers of the defendants.

These repliants, saving and reserving unto themselves all and all manner of advantages of exceptions to the manifold insufficiencies of the said answers, for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied *unto*, confessed, and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said bill they have already prayed.

MAGRATH & LOWNDES,
Repliants' Solicitors.

55 And at the said April term, 1871, came into court the said parties, complainants and defendants; and thereupon the said court proceeded to a trial of the issues involved.

The said City Council of Charleston, Stephen Thomas, and George Addison, defendants, admitted the ownership of shares of capital-stock of the said South Carolina Railroad Company by the said complainants. The South Carolina Railroad Company submitted in evidence the following extracts from the reports of the directors made to the annual meetings of the stockholders of the South Carolina Canal and Railroad Company, and of the Louisville, Cincinnati and Charleston Railroad Company, which were admitted without objection. Said defendant also submitted the following list of lands owned by it in the said city of Charleston, which was also admitted in evidence without objection.

56 1. *Semi-annual report of the direction of the South Carolina Canal and Railroad Company, July* 10, 1837.

* * * * * * *

"The directors of the Louisville, Cincinnati and Charleston Railroad Company, residing in Charleston, have asked and had a conference with a committee of the board of this company on the subject of connecting the two roads. A report on this subject is annexed, and at the disposal of the company. * * * * * * *

REPORT.

"'The committee, to whom was referred a communication from the directors of the Cincinnati Railroad Company in relation to the terms upon which the said company would unite their interests with the Charleston and Hamburg Railroad Company, beg leave to report—

"'That a conference was held by your committee with Genl's Hayne and Hamilton, and Mitchell King, esq., who appeared on behalf of the Cincinnati company.

* * * * * * *

"'Your committee are of opinion that the Cincinnati company should pay each stockholder of the Charleston and Hamburg company $125 per share, (both old and new subscription,) should assume all responsibilities and be entitled to all rights; that, for every share so purchased by the Cincinnati company of a stockholder in the Charleston and Hamburg company, the said stockholder shall subscribe for a share
57 in the Cincinnati company, and pay down the sum of five dollars.'"

* * * * * * *

2. *Semi-annual report,* 31 *Dec'r,* 1837, *of the South Carolina Canal & Railroad Company.*

* * * * * * *

"The committee, appointed in July last to confer with the stockholders individually respecting the sale of their shares in this company to the Louisville, Cincinnati and Charleston Railroad Company, have reported to an adjourned meeting that they had obtained the sanction of a large majority to a sale of their stock on the following terms:

"'$125 per share on the old stock and $25 per share advance on the new stock, payable in—for every share we sell—one share in the L., C. & C. Company stock, with $5 paid thereon, and for the balance one-third in cash, one-third in one year, and one-third in two years, with interest from date of transfer, secured by a mortgage of the property; to which that company by its president has agreed."

* * * * * * *

Semi-annual report So. Ca. Canal & Ra. Ro. Co., to July, 1838.

"Since the annual meeting in January last, the arrangement then reported for the sale of the stock of this company to the Louis-
58 ville, Cincinnati and Charleston Railroad Company has been almost entirely effected, 19,217 shares having been, up to this time, transferred, leaving only 783 yet held by individual stockholders in this company." * * * * *

* * * * * * *

First annual report, Oct., 1837. *Louisville, Cincinnati & Charleston R. R. Co.*

* * * * * * *

"The next point to which the special attention of the directors has been called by the stockholders is embraced in the report of the committee on routes, which was adopted at the meeting in January last, and which directs an inquiry into the subject of forming a connection with the Charleston and Hamburg Railroad.

* * * * * * *

"From a conference held by the president and a portion of the directors with a committee of the directors of the Charleston and Hamburg Railroad, we were induced to believe that difficulties might exist in attempting to form any connexion with that road short of an entire union of interests, and that this could be best effected by a purchase of the road with all its chartered rights and privileges.

* * * * * * *

"The resolutions hereto annexed, which have been unanimously adopted by this board, embody our views, and, with the above report and accompanying documents, are respectfully submitted to the consideration of the stockholders.

59 "*Resolutions.*

* * * * * * *

"'4. *Resolved*, That the connexion of our road with that of the South Carolina Canal and Railroad Company, either by purchase or otherwise, is extremely desirable, and that, in our opinion, a committee of the stockholders should be appointed to treat with the agents of that company expected here, to ascertain on what terms such connexion can be formed, and to recommend the proper measures to be adopted on the subject.'

"At a meeting of the stockholders held at Flat Rock, N. C., on 16 Oct., 1837, the annual report of the president & directors was, on motion of Chan. Harper, referred to a committee of thirteen, to consider and report thereon.

"*Report of the committee.*

* * * * * * *

"'The fourth resolution of the board of directors is that of greatest importance, on which opinions are most likely to be divided, and which will engage most of the attention of the stockholders. Your committee, after the fullest consideration which they have been able to give it, recommend the adoption of that resolution. It declares that a connexion

of our road with that of the South Carolina Canal and Railroad
60 Company, by purchase or otherwise, is extremely desirable, and recommend that a committee of stockholders be appointed to treat with the agents of that company as to the terms of such connexion.

"By the charter of the South Carolina Canal and Railroad Company, they have the exclusive privilege of connecting Charleston, Columbia, by means of a railroad. The most obvious consideration for this company is that, unless such connection be formed, they may be prevented from carrying their road either through Columbia, or so near it as may be virtually an infringement of the charter of the South Carolina Canal and Railroad Company, the route which appears to be the most practicable and advantageous. * * * *

* * * * * *

"'There a question arises as to the nature of this connexion. This can only be by a purchase of the whole work, or by some arrangement by which that company shall agree to transport on their road the passengers and merchandize destined for Charleston which may arrive by the Louisville, Cincinnati and Charleston Railroad. But the latter course is subject to the following objections: It might be questioned whether this were a compliance of the terms of the charter. It would not be the constructing of a road between Lexington and Charleston, but between Lexington and Columbia. It would not be a Louisville, Cincinnati and Charleston Company, but a Louisville, Cincinnati and Columbia Railroad Company. * * *

61 "'Your committe, for the information of the stockholders, have communicated with the agent of the Charleston and Hamburg Railroad Company, as to the terms on which the purchase of that road can be effected. The proposal is to sell to this company the road and privileges of the South Carolina Canal and Railroad Company at an advance of $25 on every share of the stock of that company, payable one-third in cash and the remainder in two equal annual instalments, this company assuming the debts and liabilities of the South Carolina Canal and Railroad Company.

"'The stock of the company consists of twelve thousand shares of what are called old stock, on which the full amount has been paid in; 12,000 shares, at $125 per share, would amount to $1,500,000. There are also 8,000 shares of what is called new stock, on which $30 per share has been paid. An advance of $25 on each of these will make the price $55 per share; 8,000, at $55 per share, will amount to $440,000, making the whole price $1,940,000. One-third of this, or $646,666, will be the amount of each instalment.

"'But it is proposed on the part of the South Carolina Canal and Railroad Company that their stockholders, for every share which
62 they own in the stock of that company, shall subscribe one share in the stock of this company, paying an instalment of $5 per share; $5 on 20,000 shares will amount to $100,000, and will diminish the amount of the first instalment to (be) paid by this company to $546,666.'

* * * * * * *

"The above report and resolutions, being considered by the stockholders, were adopted unanimously and ordered to be published."

* * * * * * *

In their second annual report, the president & directors say that "The Charleston railroad, which they were instructed to purchase, has been obtained on the terms proposed."

* * * * * * *

Proceedings of the stockholders of the Louisville, Cincin. & Charleston Ra' Ro. Co., 19 November, 1840.

* * * * * * *

"*Resolved*, That application be made to the legislature of South Carolina for a modification of the charter of this company, so as to reduce the stock of the company, and otherwise settle its affairs upon the following plan; and upon such authority being granted the board of directors shall forthwith proceed to carry the plan into operation:

63 "The original design of the company was to construct a road, which, by the very number of shares of one hundred dollars each, required by the charter, showed that the legislatures of the several incorporating States deemed eight millions of dollars as the least sum to be subscribed before the work should commence. This number is so decreased that not more than fifty thousand shares remain in South Carolina.

"By universal consent, therefore, the scheme is now abandoned as inexpedient and impracticable with the means of the company.

"The purchase of the Hamburg road and the completion of a branch to Columbia, with some improvements in machinery and labor, are now the only objects contemplated by the company of which the State of South Carolina is a component part."

* * * * * * *

Proceedings of the stockholders of the Louisville, Cincin. & Charleston Ra. Ro. Co., 17 Nov., 1841.

Report of special committee upon the consolidation of the affairs of the two companies, the L., C. & C. R. R. Co. and the S. C., C. & R. R. Co., under one board of directors and one set of officers.

* * * * * * *

64 "By a further amendment, granted by act of assembly in 1840, it was provided that the stockholders in the States of Tennessee and North Carolina might release their shares to the company and receive back the amount of their subscriptions. By this amendment it was contemplated that the charter of the company should be limited to the State of South Carolina." * * * * *

Proceedings of the stockholders of the Louisville, Cincin. & Charleston R. R. Co., 24 Nov., 1842.

* * * * * * *

"Col. Elmore moved the following resolution, which was adopted:

"'*Resolved*, That the president and directors be authorized to apply, if they deem it advisable, for an amalgamation of the charters of the Louisville, Cincinnati and Charleston Railroad Company and the South Carolina Canal and Railroad Company.'"

* * * * * * *

"25 Nov., 1842.

* * * * * * *

"Col. Elmore then moved that his resolution adopted at the last meeting, which reads thus: 'That the president and directors be authorized to apply to the legislature, if they deem it advisable, for an amal-

65 gamation of the Louisville, Cincinnati and Charleston Railroad

Company and the South Carolina Canal and Railroad Company,' be expunged; which was adopted."

* * * * * * *

Proceedings of the stockholders of the Louisville, Cincin. & Charleston Ra. Ro. Company, 29 & 30 November, 1843.

"29 NOVEMBER, 1843.

* * * * * * *

"Mr. Mazyck offered the following resolutions:

"'*Resolved*. That the stockholders of this company do not accept the charter proffered by the act of the legislature passed at the last session.

"'*Resolved further*, That the president and directors be authorized and instructed to petition the legislature to change the name and style of this company to the South Carolina Railroad Company, and also to provide for merging the South Carolina Canal and Railroad Company, whenever the consent of all the stockholders in that company shall have been obtained, vesting all the rights, privileges, and property of
66 that company in this, and making this company liable for all debts and contracts of that company; and also to grant to this company the exclusive privilege of building and keeping up bridges across Savannah River, at Augusta, and to except this company out of the provisions of the 41st section of the act of seventeenth of December, 1841.'

"These resolutions were seconded and severally adopted."

67 *Lands of So. Ca. R. R. Co., purchased by So. Ca. R. R. Company in & near city of Charleston.*

Lot on	John	street,	Ann Fogartie	1849
"	"	"	M. Folker	"
"	"	"	Aiken	1850
"	"	"	P. Deveneir	1849
"	"	"	J. Ferguson	"
"	"	"	Prioleau	"
"	"	"	Elder	1853
"	"	"	M. in equity	"
"	Ann	"	John Parker	1848
"	"	"	F. Parker	"
"	"	"	W'm Aiken	1849
"	"	"	" "	1863
"	"	"	R. Houston	"
"	"	"	J. W. Schmidt	1848
"	"	"	Ed. Sebring	"
"	"	"	Sam. Maverick	"
"	"	"	heirs Joe Parsons	1849
"	Mary	"	Ja's W. Gray	1847
"	"	"	Tho's C. Marshal	1848
"	"	"	Sam. Maverick	"
"	"	"	Nat. Heyward	1849
"	"	"	Tho's L. Bulow	1855
"	Reid	"	Est. Cobia	1860
"	"	"	Jane K. Wharton	1850

68

"	Spring	"	W. P. Ingraham	1847
"	"	"	E. Woodworth	1858
"	"	"	Est. Cobia	1861
"	"	"	I. Pattini	1867
"	"	"	M. in equity	1847
"	Columbus	"	R. Yeadow & others	1847
"	"	"	M. in eq	"
"	"	"	Marie Follen	1848
"	Line	"	Browning	1853
"	"	"	Stall	"
"	"	"	F. J. C. Patterson	1856
Lot on	King	street,	P. McBride	1863
" "	Meeting	street,	Mrs. C. Wilson	1847
" "	"	"	N. Heyward	1849
" "	"	"	J. McKeegan	1850
" "	"	"	A. Elfe	1856
" "	Shepherd	"	F. Limehouse	1853
" "	"	"	Z. B. Oakes	"
" "	"	"	Blake	1856
" "	"	"	Blake & Heyward	1859
" "	Cooper River	"	J. Gadsden	1853
" "	"	"	A. V. Toomer	"
" "	"	"	J. H. Thee	1856
" "	"	"	Carew & Hacker	"
" "	"	"	R. R. acc. W'h'f	1870
" "	"	"	Della Torse & Co	"
" "	"	"	R. E. Dereef	"
69				
"	"	"	Est. J. Ferguson	"
"	Romney		A. O. Norris	1856
"	"	"	Ed. T. Malone	1857
"	"	"	John M. Pearson	1859
"	"	"	A. O. Rorris	1855

The above is a correct list of the property of the So. Ca. R. R. Company in & near Charleston purchased since 1844.

A. DE CARADEUC,
L. A. S. C. R. R.

Lands of So. Ca. R. R. Co. purchased by So. Ca. Canal & R. R. Co. in and near city of Charleston.

Lot on	Hudson	street,	Miss. M. Robertson.	
" "	John	"	A. Calder.	
" "	"	"	A. Ferguson.	
" "	Ann	"	John Parker.	
" "	"	"	W. C. Doughty.	
" "	Mary	"	N. Heyward.	
" "	"	"	S. Maverick.	
" "	"	"	John Robinson.	
" "	"	"	Forest Charity.	
70				
" "	Reid	"	Mary Jahan.	
" "	Wolfe	"	I. P. Mastin.	
" "	Spring	"	I. C. Y[illegible]n.	
" "	"	"	Est. M. Belzer.	

"	"	Columbus	Est. M. You.
"	"	"	" S. Gelzer.
"	"	"	" A. Henry.
"	"	Line	" Weissenger.
"	"	"	" I. P. Labattat.
"	"	"	" Commissioners.
"	"	King	" E. Carson.
"		Romney	" W. Tyrrell.
"	"	"	" A. Sinclair.
"	"	"	" W'm Aiken.

The above is a correct list of the property of the So. Ca. R. R. Co. purchased previous to 1844.

A. DE CARADEUC,
L. A. S. C. R. R.

Whereupon the said court, on motion of the complainant's solicitors, Messrs. Magrath and Lowndes, made the following decree:

71 In the circuit court.

THE UNITED STATES OF AMERICA,
District of South Carolina:

BRANCH SONS & CO.
vs.
THE CITY COUNCIL OF CHARLESTON. } Bill for injunction and relief.

This cause came on to be heard on the pleadings and process; and after hearing cause, it is ordered and adjudged and decreed that the injunction heretofore granted in the above cause be made perpetual.

HUGH L. BOND.
GEO. S. BRYAN,
U. S. Judge, Dist. S. C.

27TH APRIL, 1871.

And at the said April term. A. D. 1871, came into court the said City Council of Charleston and Stephen Thomas and George Addison, by D. T. Corbin, their solicitor, and then and there prayed that an appeal be granted them from the said decree rendered as aforesaid; which prayer was granted.

The petition and order are in words and of the tenor following:

72 UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

THOMAS BRANCH, A CITIZEN OF THE STATE of Virginia; John P. Branch, a citizen of the State of Virginia; Frederick R. Scott, a citizen of the State of Virginia; Thomas P. Branch, a citizen of the State of Georgia, copartners under the name of Branch, Sons & Company,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY, a corporation created by the laws of South Carolina; The City Council of Charleston, a corporation created by the laws of South Carolina; Stephen Thomas, a citizen of the State of South Carolina, and George Addison, a citizen of the State of South Carolina. } In equity. April term, 1871.

To the honorable the judges of the circuit court of the United States for the district aforesaid.

73 The humble petition of The City Council of Charleston, Stephen Thomas, and George Addison, showeth:

1. That, by the decree dated the 27th day of April, A. D. 1871, in the above-mentioned cause, it was ordered that the decree of injunction theretofore granted, restraining your petitioners from proceeding to enforce the collection of taxes levied on the property of the said North-eastern Railroad Company, &c., be made perpetual.

2. That the said order, dated as aforesaid, is, as your petitioners are advised and humbly submit, erroneous, and the same ought to be reversed.

Your petitioners therefore humbly pray that they may be allowed an appeal from the said decree to the Supreme Court of the United States.

D. T. CORBIN,
Solicitor for Petitioners.

Appeal allowed, as prayed for, by the court.

GEORGE S. BRYAN,
U. S. Judge.

74 In equity.

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

The President of the United States of America to the South Carolina Railroad Company:

You are hereby summoned to be and appear before the judges of the Supreme Court of the United , at the Capitol at Washington, D. C., on the first Monday of December next, then and there to join with The City Council of Charleston, Stephen Thomas, and George Addison in prosecuting an appeal from the decree of this court granting a perpetual injunction against you and the said City Council of Charleston, Stephen Thomas, and George Addison, on the complaint of Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch, copartners under the name of Branch, Sons and Company.

And also, that you do, within thirty days from the service hereof, file, or cause to be filed, with the clerk of the circuit court for said
75 district, a notice of severance, if you do not desire to be joined with the said City Council of Charleston, Stephen Thomas, and George Addison as an appellant in the prosecution of the said appeal.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in said South Carolina district, the tenth day of April, 1871, and in the ninety-fifth year of the sovereignty and independence of the United States of America.

D. T. CORBIN,
For Appellants.
D. H. CHAMBERLAIN,
Of Counsel.

Teste:
DAN'L HORLBECK,
C. C. C. U. S. for S. C.

Service of the within acknowledge' this 7th June, 1871.

PORTER & CONNER,
Sol's S. C. R. R. C.

76 THE UNITED STATES OF AMERICA,
District of South Carolina:

BRANCH, SONS AND COMPANY
vs.
THE CITY COUNCIL OF CHARLESTON, THE South Carolina Railroad Company, et al.

The South Carolina Railroad Company, one of the defendants in the above-entitled cause, upon whom citation has been served to join with The City Council of Charleston and others, appellants, in prosecuting an appeal from the decree of the circuit court of the United States for the district aforesaid in the above-entitled cause, hereby file in said circuit court their notice that they are content with the decree of the circuit court and do not appeal therefrom, and do hereby sever from their co-defendants on said appeal.

PORTER & CONNER,
Solicitors for S. C. R. R. Co., Def'ts.

77 *Order of severance.*

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

THE CITY COUNCIL OF CHARLESTON, Stephen Thomas, and George Addison, appellants,
vs.
BRANCH, SONS & COMPANY, APPELLEES.
In equity.

On reading the summons to the South Carolina Railroad Company to become a party to the appeal in this cause from the decree entered on the 27th day of April, 1871, and the notice of the said company declining so to do, on motion of D. T. Corbin, esq., solicitor for appellants, ordered that said appellants, The City Council of Charleston, George Addison, and Stephen Thomas, have leave to appeal from said decree without joining said South Carolina Railroad Company with them, as appellants.

GEO. S. BRYAN,
U. S. Judge, S. C. Dist.

JULY 10TH, 1871.

78 *Waiver of security.*

THE CITY COUNCIL OF CHARLESTON AND OTHERS, appellants,
vs.
BRANCH, SONS & CO., APPELLEES.

The appellees hereby consent that the appellants may appeal to the Supreme Court of the United States from the decree entered in the case of Branch, Sons & Co. against The City Council of Charleston, the South Carolina Railroad Company, and others, on the 27th day of April, 1871, without security.

MAGRATH & LOWNDES,
Solicitors for Branch, Sons & Co.

To the honorable the judges of the circuit court of the United States for the district aforesaid.

73 The humble petition of The City Council of Charleston, Stephen Thomas, and George Addison, showeth:

1. That, by the decree dated the 27th day of April, A. D. 1871, in the above-mentioned cause, it was ordered that the decree of injunction theretofore granted, restraining your petitioners from proceeding to enforce the collection of taxes levied on the property of the said North-eastern Railroad Company, &c., be made perpetual.

2. That the said order, dated as aforesaid, is, as your petitioners are advised and humbly submit, erroneous, and the same ought to be reversed.

Your petitioners therefore humbly pray that they may be allowed an appeal from the said decree to the Supreme Court of the United States.

D. T. CORBIN,
Solicitor for Petitioners.

Appeal allowed, as prayed for, by the court.

GEORGE S. BRYAN,
U. S. Judge.

74 In equity.

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

The President of the United States of America to the South Carolina Railroad Company:

You are hereby summoned to be and appear before the judges of the Supreme Court of the United , at the Capitol at Washington, D. C., on the first Monday of December next, then and there to join with The City Council of Charleston, Stephen Thomas, and George Addison in prosecuting an appeal from the decree of this court granting a perpetual injunction against you and the said City Council of Charleston, Stephen Thomas, and George Addison, on the complaint of Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch, copartners under the name of Branch, Sons and Company.

And also, that you do, within thirty days from the service hereof, file, or cause to be filed, with the clerk of the circuit court for said
75 district, a notice of severance, if you do not desire to be joined with the said City Council of Charleston, Stephen Thomas, and George Addison as an appellant in the prosecution of the said appeal.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in said South Carolina district, the tenth day of April, 1871, and in the ninety-fifth year of the sovereignty and independence of the United States of America.

D. T. CORBIN,
For Appellants.
D. H. CHAMBERLAIN,
Of Counsel.

Teste:
DAN'L HORLBECK,
C. C. C. U. S. for S. C.

Service of the within acknowledge' this 7th June, 1871.

PORTER & CONNER,
Sol's S. C. R. R. C.

76 THE UNITED STATES OF AMERICA,
District of South Carolina:

BRANCH, SONS AND COMPANY
vs.
THE CITY COUNCIL OF CHARLESTON, THE South Carolina Railroad Company, et al.

The South Carolina Railroad Company, one of the defendants in the above-entitled cause, upon whom citation has been served to join with The City Council of Charleston and others, appellants, in prosecuting an appeal from the decree of the circuit court of the United States for the district aforesaid in the above-entitled cause, hereby file in said circuit court their notice that they are content with the decree of the circuit court and do not appeal therefrom, and do hereby sever from their co-defendants on said appeal.

PORTER & CONNER,
Solicitors for S. C. R. R. Co., Def'ts.

77 *Order of severance.*

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

THE CITY COUNCIL OF CHARLESTON, STEPHEN THOMAS, and GEORGE ADDISON, appellants,
vs.
BRANCH, SONS & COMPANY, APPELLEES. } In equity.

On reading the summons to the South Carolina Railroad Company to become a party to the appeal in this cause from the decree entered on the 27th day of April, 1871, and the notice of the said company declining so to do, on motion of D. T. Corbin, esq., solicitor for appellants, ordered that said appellants, The City Council of Charleston, George Addison, and Stephen Thomas, have leave to appeal from said decree without joining said South Carolina Railroad Company with them, as appellants.

GEO. S. BRYAN,
U. S. Judge, S. C. Dist.

JULY 10TH, 1871.

78 *Waiver of security.*

THE CITY COUNCIL OF CHARLESTON AND OTHERS, appellants,
vs.
BRANCH, SONS & CO., APPELLEES.

The appellees hereby consent that the appellants may appeal to the Supreme Court of the United States from the decree entered in the case of Branch, Sons & Co. against The City Council of Charleston, the South Carolina Railroad Company, and others, on the 27th day of April, 1871, without security.

MAGRATH & LOWNDES,
Solicitors for Branch, Sons & Co.

79 THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

I, Daniel Horlbeck, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing is a true and correct copy of the record and proceedings of the decree in the case of Branch, Sons and Company against The South Carolina Railroad Company, The City Council of Charleston, Stephen Thomas, and George Addison, rendered as aforesaid, together with all things relating to the same.

Given under my hand and the seal of said court, at the city of Columbia, in the district aforesaid, on this twenty-eighth day of November, A. D. 1871.

[SEAL.] DAN. HORLBECK,
C. C. C. U. S. for S. C.

(Indorsement on cover:) No. 475. The City Council of Charleston, Stephen Thomas, and George Addison, appellants, vs. Thomas Branch, John P. Branch, Frederick R. Scott, and Tho's P. Branch, as Branch, Sons & Company. S. Carolina C. C. U. S. Filed 4th December, 1871.

Supreme Court of the United States.

CITY COUNCIL OF CHARLESTON AND OTHERS, Appellants,

vs.

THOMAS BRANCH AND OTHERS.

BRIEF OF MR. MAGRATH

FOR THOMAS BRANCH AND OTHERS.

McGill & Witherow, Printers, 1107 E street, Washington, D. C.

SUPREME COURT OF THE UNITED STATES.

THE CITY COUNCIL OF CHARLESTON, ET AL.,

vs.

THOMAS BRANCH, ET AL.

In the argument of this case, much that would properly have been said for the complete understanding of it, has been already presented in the case of Tomlinson, *et al. vs.* Branch, *et al.;* and, therefore, in this no more will be necessary than to refer to the brief in that case, for whatever in this case may require explanation; particularly in regard to the history of the legislation of the State of South Carolina, or the decisions of the Courts of the State, in questions affecting the South Carolina Railroad Company since 1843, or previous to that time, when it was known as the Louisville, Cincinnati and Charleston Railroad Company.

The City Council, of Charleston, attempted to levy and collect a tax upon the property of the South Carolina Railroad Company, within the limits of that municipal corporation; the enforcement of which was enjoined.

From this restraining order an appeal is taken on these grounds:

1. That the property of the South Carolina Canal and Railroad Company is the property of the South Carolina Railroad Company. That the property of the South Carolina Canal and Railroad Company was exempted from taxation for thirty-six years, which have expired; and that the South Carolina Railroad Company can claim no further exemption.

2. That the exemption of the 43d Section of the Act of 1835, incorporating the Cincinnati and Charleston Railroad Company is not of force, because the Company to which such charter and exemption therein was granted has not performed, but has abandoned the purpose for which it was created.

3. Because the acceptance by the South Carolina Railroad Company of the Acts of the Legislature of 1865 and 1866, was

the waiver of its protection from the operation of the 41st Section of the Act of 1841; and thereby its charter became subject to amendment, modification, or repeal by the Legislature. That such modification and amendment have been made by the Constitution of the State of South Carolina, adopted in 1868, Art. 9th, Section 1st, and Art. 12th, Section 2d; and by the Act of the Legislature of the State, ratified 15th September, 1868.

The language used in the answer of the City Council is as strong as it can be made. It sets forth "that the real estate of the said South Carolina Railroad Company, situate within the corporate limits of the said City of Charleston has all been acquired, and has been, and is now held by said Company, under the authority of the Act of General Assembly above cited, incorporating the South Carolina Canal and Railroad Company, and the Acts amendatory thereof, and not under the authority of the Act of General Assembly incorporating the Cincinnati and Charleston Railroad Company, and the Acts amendatory thereof."

A statement so sweeping would, it may be supposed, have suggested the necessity for some evidence to sustain it. No particle of proof has been submitted.

The South Carolina Railroad Company at the trial did produce evidence of its property. At page twenty-one of brief is a statement of the property which did belong to the South Carolina Canal and Railroad Company, and had been purchased from it by the South Carolina Railroad Company, and also the property purchased by the South Carolina Railroad Company since 1843.

The property other than that which the South Carolina Railroad Company purchased from the South Carolina Canal and Railroad Company, has been purchased by it since 1847.

And of all the property of the South Carolina Railroad Company, however obtained, or from whomsoever purchased, it is believed that not a piece thereof, was within the corporate limits of the City of Charleston; and therefore, because of location; exempt from municipal taxation until 1849, when the Legislature passed an Act to extend the limits of the City of Charleston.

In 1849, then, and not before, when, if in cases where no special exemption prevailed, the power of the municipal corporation to levy the tax could have been exercised, the South

Carolina Canal and Railroad Company had ceased to exist; it had been merged in the South Carolina Railroad Company; its property purchased by the South Carolina Railroad Company; to that company all its rights, privileges and property had been transferred by purchase; and the South Carolina Railroad Company had, under the 43d Section of the Act of 1835, for all the property and estates, real and personal, belonging to it, exemption "forever" from taxation.

When any property of the South Carolina Railroad Company, now sought to be taxed, was within the extended limits of the City of Charleston, in consequence of the extension thereof; it was then, as it has been since, the property of the South Carolina Railroad Company, and of no other corporation whatsoever.

This misapprehension of the fact, is not greater than is the misapprehension of the law, which is relied on to support the conclusion, that the South Carolina Railroad Company took such property (referring to that which had been purchased from the South Carolina Canal and Railroad Company,) with no other or greater exemption than it possessed while and as the property of the South Carolina Canal and Railroad Company.

This proposition is attempted to be maintained by the case of the Philadelphia and Wilmington Railroad Company *vs.* The State of Maryland, 10 How., 376. The facts in that case are known to this Court. Brief reference will only be made to such as show most clearly how inapplicable is the rule in that case to the case before this Court. Three distinct companies, created by three distinct charters, granted by three distinct States; became, by their application to, and by appropriate legislation in, these States, "a corporation composed of several railroad companies." The capital stock of this new corporation was the aggregate shares of the three companies. The distribution of this into shares not equally made among the stockholders, but regulated by the relation they had to their several companies before the new corporation was formed. All the estate, real and personal, and the rights, privileges, advantages and immunities belonging to each of the said corporations, became vested in the new corporation; and the debts of each became the debts of the new corporation. The particular right or privilege which interests us in this case, is that which re-

lates to taxation. Of these three companies, but one, the Delaware and Maryland Railroad Company, had any exemption from taxation; and from that was excepted the permanent or fixed works which might be in Maryland. This company, (Delaware and Maryland) afterwards united with the Wilmington and Susquehanna Railroad Company. The exemption of the Delaware and Maryland Railroad Company was, so far as it went, extended to the union of the two roads; and to the plaintiffs in error in the case reported in 10 How., 376. This exemption from taxation in the charter of the Delaware and Maryland company, was the only exemption possessed by the new corporation. And the question was, whether there was any exemption which could be claimed by the new corporation, beyond that which the Delaware and Maryland had, and from which company alone was there derived any claim to any exemption. The case came before this Court, and it held, that there was no exemption from taxation in any of the charters except that granted to the Delaware and Maryland company; that such exemption, as far as it would go, belonged to the new corporation. But as it went only to exempt the property of the Delaware and Maryland company, it could not be made to cover or exempt other property of any other of the companies which had united and made the new corporation; when no exemption had been made in the original charter of such companies, or in the charter of the three companies combined.

If this decision were applicable to the case before the Court, it would only be, if, in the formation of the new company, the Legislatures of the several States had declared that, "the capital stock, the dividends thereon, and all the property and estates, real and personal, belonging to the said company, shall be forever exempt from taxation." If, then, this Court had declared that property which, before it belonged to the new corporation, had either been not exempt or partially so, should, after it belonged to the new company, continue and be in the same condition that it was in before the formation of the new company; without regard to any privilege or exemption given to the new corporation, such a decision, if such could ever have been rendered by this Court, might have been cited as applicable to the case now before the Court.

When, therefore, it was claimed that the property of the Baltimore and Port Deposit Company, which had not been exempted from taxation in the charter originally granted to that company, should be exempted because it had become united with another company to which exemption of its property had been given; and in the charter of the companies when combined, no other proviso had been made, than that they might enjoy the rights, privileges and immunities belonging to each, how could it be claimed that the privilege of one, not only belonged to the new combination so far as it had gone, but should go far beyond it. The exemption of the Baltimore and Port Deposit Railroad, had not been the right and privilege of that company; it had not been made a right or privilege of the company, formed by the union of that with any other company. The difference between that case and this is so very marked that it seems scarcely necessary to refer to other essential differences which distinguish them in all respects. In this case there is not a new company, but one with its rights and privileges fixed, its charter in existence, its organization perfect; and with the consent of the Legislature, such a corporation by purchase obtains all the property of another corporation, with its rights and privileges, super-added to those it had. Of that other, corporate existence ceased; its franchise had been transferred; it was dissolved, but the results of dissolution saved, by transferring to another, instead of surrendering back to the State, the rights and privileges it had received from the State. "All the stockholders" must consent "in writing." When that is done it "shall be merged in the South Carolina Railroad Company." "All the rights, privileges and property," "shall be vested in the South Carolina Railroad Company." Does "merger" imply destruction or disintegration of that which becomes the recipient or absorbent? Does the "merger" of the lesser into the greater estate do more than enlarge the latter? Does the outstanding term "merged" in an estate subject to the term, lessen the estate? Is "merging" in this case a repeal to any extent or qualification of the right or privilege of the South Carolina Railroad Company? Is it accompanied with any condition, expressed or implied, affected by any rule of law, that attaches to the transfer a condition, and qualifies an existing right of the South Carolina Railroad Company as to its property or estates?

The existence of the charter of the South Carolina Railroad Company was not drawn in question. The extent of its powers and its exemption were fresh in the mind. The State that created, said, you may acquire this property. It had said, what is your property shall be exempt from taxation. How can it be said that what becomes its property shall not be affected by what the Legislature had said will attach to "all" its "property and estates?"

But in regard to this matter we have this somewhat remarkable circumstance, that before this Court officers of the State, who represent and speak for the State in another case, appear and ask that the tax levied for the State shall be paid by this Company. But upon what ground do they rest the right of the State? In the pleadings, in that case now before the Court, they are stated. But do they raise the questions which the City Council presents? Is the State, or its officers who are before this Court, not to be presumed to know what are the rights of the State; what it understands is its own meaning and intention? Can the City Council make terms and conditions for the State? And if the State, in insisting on its right to levy a tax, ignores that construction which the City Council seek to enforce, what conclusion can this Court reach, except that when the City Council asserts that which the State does not confirm in that which relates to itself, the State better than the City Council knows the true intent and meaning of its own contract and purpose.

That the authority and power of the City Council of Charleston was not left uncontrolled in regard to any thing connected with the South Carolina Railroad Company, may be seen in the Act of 1858, when the charter of the South Western Railroad Bank was renewed. This bank had as its stockholders the corporators in the Louisville, Cincinnati and Charleston Railroad Company, but was declared to be "a separate body corporate in deed and in law for banking purposes," etc. When the charter of this bank was renewed in 1858, the Legislature specially provided that no municipal corporation shall tax its capital or profits unless with the authority of the Legislature. In the charter of the bank in 1836, the capital of the bank and all the funds thereof, the shares of the stockholders therein, and the dividends thereon, were made free from taxation. Its real estate and its goods pledged for money lent, and its goods,

the produce of its lands, could be taxed at the same rate as similar real estate and goods are taxed. That power of taxation to that extent the State reserved to itself; but the City Council could not exercise it without authority from the Legislature.

The bank was not the South Carolina Railroad Company; nor was the bank its property or estate; it was but the financial agent of that company. The exemption of the property and estates of the South Carolina Railroad Company was perfect. That of the bank was qualified; but so far as the City Council were concerned, it was absolute unless the Legislature otherwise directed.

The proposition then of the City Council is not true in fact or in law. The property of the South Carolina Railroad Company is not held as the property of the South Carolina Canal and Railroad Company. It was not purchased to be held otherwise than under the charter of the South Carolina Railroad Company. The authority of the company to purchase and hold property is given in explicit terms, and the purchase of the property from the South Carolina Canal and Railroad Company had the most positive legislative sanction.

2. The second proposition set forth in the answer of the City Council, that the exemption in the Act of 1835 is not of force, because the Louisville, Cincinnati and Charleston Railroad Company, or, as now called, the South Carolina Railroad Company, has not accomplished or proceeded to accomplish the purpose for which it was chartered; simply presents an issue, for the decision of which, those inquiries must be made which only belong to a case of alleged forfeiture of its charter.

In such an issue only, an issue to which the State is, of necessity, the proper party, an issue which can only be conducted under the authority of the State, can this proposition of the City Council be considered if made by and in behalf of the State?

Here again it is to be observed that while the State, through its officers in this Court, make no charge which affects the charter of the company; when their silence is the answer to the proposition of the City Council; yet, advised of that silence, because the answer of the officers of the State was on the file of the Court before the answer of the City Council was put in, still the City Council persists in its proposition.

For all the purposes of this controversy between the South Carolina Railroad Company and the City Council, the charter is to be accepted as unquestioned and unquestionable.

The assertion of a right on the part of the City Council to try the question of non-user or of mis-user of corporate privilege or right, so that upon a finding it could exercise a power which it could not if the charter were not questioned, is simply the assertion of a right to try not only whether a franchise has been granted, but whether if granted, it has not been forfeited.

The Act of 1835, and every part thereof, in this proceeding, is accepted by the Court as of full force, unless there is before it proof; either that there has been a surrender of the franchise to the State by the corporators: or, that the State, in proper proceedings, has established its power under the 41st Section of the Act of '41, to exercise the powers therein reserved to the State: or, that in proceedings by *scire facias* to vacate the grant and annul the franchise, judgment has been given for the State.

The mode in which it is attempted to set aside the exemption as set forth in the 43d section of the Act of 1835, must reach beyond that section and affect the charter itself. The exemption is one of several franchises contained in the charter. It is sustained by the same consideration that supports every other part of the charter. That section cannot be attacked, without attacking the charter, and no rule is better established than that for the enforcement of a forfeiture, there must be a direct proceeding for that purpose.

But if there was merit in the propositions now set up by the City Council, we may ask why has the announcement been delayed until this time? If it can be now urged by the City Council it could have been urged at any time since 1843. Who explains the silence? If to abandon the construction of the road to Cincinnati be to forfeit the charter, in 1843, the rights and privileges of the South Carolina Canal and Railroad Company in its charter were transferred to the Louisville, Cincinnati and Charleston Railroad Company or the South Carolina Railroad Company. These rights and privileges not superseding, but being super-added to such as were then existing in the South Carolina Railroad Company. And cause of forfeiture of the charter of the South Carolina Railroad Company, unless condoned by the authority of the State, would have carried with it, all the rights and privileges however obtained.

But the often repeated legislation of the State in relation to the South Carolina Railroad Company since 1843, would be accepted in every Court as the unquestioned waiver of the forfeiture if cause for it ever existed.

If excuse be alleged on the part of the City Council, because of the opinion that the exemption given to the South Carolina Canal and Railroad Company, continued, notwithstanding the cause of forfeiture as alleged by the South Carolina Railroad Company, what will be the explanation of its inaction in regard to property purchased by the South Carolina Railroad Company, but which never belonged to the South Carolina Canal and Railroad Company?

In the statement of the South Carolina Railroad Company will be found purchasers by it of property at various times from 1847 to 1870.

How explain this long delay in the assertions of the right of the City Council, if such right was ever really supposed to exist?

If it could be necessary to say more upon this point it would be proper to ask the Court to refer to the legislation and the decisions of the State Courts in relation to the acceptance of the changes made in the substitution of others for the purposes which originally led to the incorporation of the Louisville, Cincinnati and Charleston Railroad Company. If any case could present conclusive proof of legislative sanction for all that has been done, it would be this.

3. The next proposition announced in the answer of the City Council, like those which have been already examined, is marked by the peculiarity of asserting for the State that which the State declines to assert, and, in so declining, contradicts. This proposition is, that the Acts of the Legislature in 1865 and 1866, entitled "An Act to lend the credit of the State to secure certain bonds to be issued by the South Carolina Railroad Company, and for other purposes," and "An Act to amend" the foregoing Act, is a "grant of a charter or a renewal amendment or modification thereof," within the meaning of the 41st Section of the Act of 1841, so that by the acceptance thereof, the charter of the South Carolina Railroad Company became subject to amendment, alteration or repeal by the legislative authority, and that such authority has been exercised in the adoption of the Constitution of 1868, and the Act of the Legislature.

For all the purposes of this controversy between the South Carolina Railroad Company and the City Council, the charter is to be accepted as unquestioned and unquestionable.

The assertion of a right on the part of the City Council to try the question of non-user or of mis-user of corporate privilege or right, so that upon a finding it could exercise a power which it could not if the charter were not questioned, is simply the assertion of a right to try not only whether a franchise has been granted, but whether if granted, it has not been forfeited.

The Act of 1835, and every part thereof, in this proceeding, is accepted by the Court as of full force, unless there is before it proof; either that there has been a surrender of the franchise to the State by the corporators: or, that the State, in proper proceedings, has established its power under the 41st Section of the Act of '41, to exercise the powers therein reserved to the State: or, that in proceedings by *scire facias* to vacate the grant and annul the franchise, judgment has been given for the State.

The mode in which it is attempted to set aside the exemption as set forth in the 43d section of the Act of 1835, must reach beyond that section and affect the charter itself. The exemption is one of several franchises contained in the charter. It is sustained by the same consideration that supports every other part of the charter. That section cannot be attacked, without attacking the charter, and no rule is better established than that for the enforcement of a forfeiture, there must be a direct proceeding for that purpose.

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But the often repeated legislation of the State in relation to the South Carolina Railroad Company since 1843, would be accepted in every Court as the unquestioned waiver of the forfeiture if cause for it ever existed.

If excuse be alleged on the part of the City Council, because of the opinion that the exemption given to the South Carolina Canal and Railroad Company, continued, notwithstanding the cause of forfeiture as alleged by the South Carolina Railroad Company, what will be the explanation of its inaction in regard to property purchased by the South Carolina Railroad Company, but which never belonged to the South Carolina Canal and Railroad Company?

In the statement of the South Carolina Railroad Company will be found purchasers by it of property at various times from 1847 to 1870.

How explain this long delay in the assertions of the right of the City Council, if such right was ever really supposed to exist?

If it could be necessary to say more upon this point it would be proper to ask the Court to refer to the legislation and the decisions of the State Courts in relation to the acceptance of the changes made in the substitution of others for the purposes which originally led to the incorporation of the Louisville, Cincinnati and Charleston Railroad Company. If any case could present conclusive proof of legislative sanction for all that has been done, it would be this.

3. The next proposition announced in the answer of the City Council, like those which have been already examined, is marked by the peculiarity of asserting for the State that which the State declines to assert, and, in so declining, contradicts. This proposition is, that the Acts of the Legislature in 1865 and 1866, entitled "An Act to lend the credit of the State to secure certain bonds to be issued by the South Carolina Railroad Company, and for other purposes," and "An Act to amend" the foregoing Act, is a "grant of a charter or a renewal amendment or modification thereof," within the meaning of the 41st Section of the Act of 1841, so that by the acceptance thereof, the charter of the South Carolina Railroad Company became subject to amendment, alteration or repeal by the legislative authority, and that such authority has been exercised in the adoption of the Constitution of 1868, and the Act of the Legislature.

The Act of 1865 and of 1866, were passed to extend the time for the payment of the debt, contracted by the Louisville, Cincinnati and Charleston Railroad Company, and, for the guaranty of which, the State, in 1837, lent its credit, and pledged its faith and funds to secure payment of it.

Was this Act of 1837 an amendment of the charter of the Louisville, Cincinnati and Charleston Railroad Company? Was it so intended, so understood?

In every case where the State intended to amend this charter, it said so in the title of the Act. In this Act of 1837 it says in the title what is the purpose of the Act; it is "to lend the credit of the State, to secure any loan which may be made by the Louisville, Cincinnati and Charleston Railroad Company." The Act of 1865 is expressed in similar terms. If the Act of 1837 was not an amendment of the charter, why should the Act of 1865, expressed in like terms, and relating to the same subject, be otherwise considered?

If there could exist a doubt about the fallacy involved in this proposition of the City Council, a short examination of it will remove the doubt and make the fallacy clear.

The power of the corporation to borrow money is plain.

But it will not be said that the charter of this company obliges the State to be its guarantor. If it does so, it is by its own will, and that will is expressed in the form of an Act of the Legislature.

This guaranty, when given, is not an act of sovereignty; it is not any peculiar attribute of a State. It is no more than any person does or may do. In this case it was coupled with a condition that the South Carolina Railroad Company should give indemnity to the State. The same could be done, would be required to be done, if any person or persons had guaranteed the debt in place of the State.

But the fact that the State becomes surety for a person or a corporation is not the grant of a franchise.

If so, every surety, by his act, becomes a sovereign, because the sovereign alone grants a franchise. What is a franchise? A royal privilege in the hands of a subject.

In England, a privilege of a subject, which the King alone could grant, would be a franchise.

In the United States, a privilege or immunity of a public na-

ture, which cannot be legally exercised without a Legislative grant, would be a franchise. (Angels & Ames Corp., sec. 737.)

When the State undertakes the obligation of a surety for a corporation, it is the act of the State; not the exercise by the corporation of any privilege or immunity.

A corporation is a political person, enjoying a variety of franchises. It is to a franchise, as a subject to its attribute—something to which many attributes belong—but itself something distinct from these attributes. (Angels & Ames Corp., sec. 4; Kyd on Corp., 15.)

Where, in the charter of the South Carolina Railroad Company, is the obligation of the State as a guarantor declared to be an attribute belonging to the corporation—one which, possessed by the corporation, is incapable of being withdrawn or denied by the State; certain as are the terms of a contract, that the State shall guarantee the debts of the corporation?

Until the third person, the creditor, dealt with the South Carolina Railroad Company, on the faith of the Act of 1837, the State could refuse to do what it had said it would do. The promise to become surety for a debt not existing, without consideration, is *nudum pactum*.

But that was not the case with the 43d section of the Act of 1835, giving the charter. When ratified, it became a contract, binding the State, and the attempt to impair its obligation, violated the Constitution of the United States.

But suppose there had been an understanding expressed in some part of the Act of the Legislature, in which the charter was granted, in relation to the guaranty of the State; even then, subsequent legislation concerning that would not have been legislation amending or modifying the charter. Why? Because it would relate simply to a matter connected with the management, business, or construction of the road, which could be adapted to considerations of expediency, but being no part of the corporate franchises, did not thereby affect the charter. (Angels & Ames, sec. 767.)

The distinction has been recognized by this Court in the Bank of Columbia *vs.* Okely, 4 Wheat., 235; Young *vs.* Bank of Alexandria, 4 Cranch, 384. A change in the mode of proceeding against debtors, prescribed in the charter, did not affect the charter, because it did not relate to that which was in itself a franchise granted by the charter.

It is more than difficult to understand upon what evidence, or circumstance of any kind, the City Council rests the conclusion that in this renewal of the security, which the State gave by its pledges in 1866, for the extension of the debt under the Act of 1837, intended to assert for itself its power under the 41st Section of the Act of 1841; or that the South Carolina Railroad Company intended to strip itself of the obligation which the charter imposed on the State; and which, because it was a contract, the State could not impair.

The proposition of the City Council, it has been already said, if true, would not only extend to the exemption from taxation, but to every other franchise of this corporation.

Indeed, that which was the subject-matter of the Acts of 1865 and 1866, was more directly connected with the relation of the State to the creditor, than to the State with the South Carolina Railroad Company.

The property of the Company, which had furnished indemnity to the State, was almost wholly destroyed. In its then condition it did not give protection to the State, if the State had been required to redeem the debt. Nor could the State then have answered the requirement of the creditor if it had been made. The interests of the creditor, the necessities of the State, were both consulted in the extension of the time for payment of the debt, that relieved from pressure the stockholders, might be able to rebuild the Road broken and destroyed; and in that restore and renew the indemnity to the State which it had under the Act of 1837.

To treat this as bringing this corporation within the provisions of the 41st Section of the Act of 1841, is that which the State has not done, and which the City Council cannot do for it.

But the Acts of 1865 and 1866, while they cannot accomplish for the City Council of Charleston what it desires, does according to the settled rule in the Courts of the State of South Carolina, give protection to the South Carolina Railroad Company against all matters of exception to it, if any such existed, prior to these Acts.

According to the rule of law as laid down by the highest court in the State, in the case of the State *vs.* the Bank of Charleston, 2 McMullen, L. R. 441, these Acts operate as the legislative condonation of all matter previously done, or suffered by the South Carolina Railroad Company, and which

if they had been such as affected the charter of that Company would have relieved the Company from all the consequences otherwise resulting therefrom. But every act of the Legislature involves the recognition of the corporate existence of the Louisville, Cincinnati, and Charleston Railroad Company—of course the continuance of its charter under the name of the South Carolina Railroad Company, and therefore of every right and privilege derived from it. In the case cited the bank had suspended specie payments, whereby its charter had become forfeited. But the assent of the Legislature to a change in the time and mode of payment of instalments due for its stock, involved the existence of the bank, the exercise of its functions, and waived the forfeiture.

In the brief filed by the appellants, the proposition in regard to the ownership of the property now held by the South Carolina Railroad Company is in form somewhat changed; and it is there said that the property of that Company within the limits of the city of Charleston, and taxed therein for the year 1870, was acquired and is held by virtue of the powers and privileges obtained from the charter of the South Carolina Canal and Railroad Company, and not under the charter of the Louisville, Cincinnati, and Charleston Railroad Company.

At the hearing in the circuit court, testimony was introduced showing what property in and near the city of Charleston belonged to the South Carolina Railroad Company, because of the purchase by it of the property of the South Carolina Canal and Railroad Company; and what property was purchased by the South Carolina Railroad Company after 1843, when the corporate existence of the South Carolina Canal and Railroad Company had ceased. The Record, pp. 21, 22, 23, shows how much larger is the property purchased since 1843.

The proposition, as now stated in behalf of the appellants, is sought to be sustained by the case of the Philadelphia, Wilmington, and Baltimore Railroad Company *vs.* Maryland, (10 How., Rec., 376.) That case has been already examined, and it has been seen how different are the facts in this case from those presented in that. And in the brief in behalf of appellants, it is set forth, that whatever right the South Carolina Railroad Company now possesses to acquire and hold property within the limits of the city of Charleston, it acquired from the South Carolina Canal and Railroad Company, 1832. But in fact in 1840, the Legisla-

ture gave directly to the South Carolina Railroad Company permission, "with the consent of the City Council, to extend their railroad to some one or more of the wharves in Charleston." There is nowhere more special authority given to one of these roads than to the other to acquire and hold property within the limits of the City of Charleston; and the grant in 1832 to the South Carolina Canal and Railroad Company, enabled that Company to go to *the boundary line of the city;* and authorized the City Council to permit the extension and construction of the road through public streets and lands of the city, under certain restrictions.

Indeed, the analysis of the argument presented in the brief of appellants may be thus stated: The Louisville, Cincinnati, and Charleston Railroad Company failed to accomplish the purpose for which it was created; the Legislature gave to it all the property, rights, and privileges of the South Carolina Canal and Railroad Company. That company last named had an exemption from taxation for 36 years, which have expired; the property of the South Carolina Canal and Railroad Company was transferred subject to "all liens and charges" on the same; therefore, the South Carolina Railroad Company cannot hold, because its corporate purposes have not been accomplished; it can only hold by the charter of the South Carolina Canal and Railroad Company. It holds, therefore, subject to all the qualifications in that charter; and the preservation of "liens and charges" in the act of 1843 includes liability for taxation.

The fundamental error in all of this is, that it involves the virtual extinction of the chartered rights and privileges of the South Carolina Railroad Company—the name given to the Louisville, Cincinnati and Charleston Railroad Company. The vitality of that corporation it assumes is derived altogether from the charter of the South Carolina Canal and Railroad Company. But, in fact, it was the corporation of the South Carolina Canal and Railroad Company which was extinct; for its corporate form and feature were gone; its property, its rights, and its privileges became vested in the South Carolina Railroad Company. And the entire "stock and property" of the South Carolina Railroad Company became subject to the same liens and charges to which "the stock and property" of the South Carolina Canal and Railroad Company may be liable; in the same relative order *in which the said liens and charges now stand.*" These latter

words are sufficient to exclude the idea of a reference to taxation being included in or intended by them.

Now, whatever right or privilege or property the South Carolina Canal and Railroad Company had, passed to the South Carolina Railroad Company.

But the only qualification attached to the change of ownership was the liability for "liens and charges," existing in regard to property, right, or privilege, is transferred. Such "liens and charges," after 1843, affected not only the property so transferred, but all the property of the South Carolina Railroad Company.

After the transfer, whose right, or privilege, or property was that which had been purchased? And what were the liens and charges imposed on the purchaser?

If the South Carolina Canal and Railroad Company had no exemption from taxation, would that which was its property—when purchased by another corporation, the property of which was exempt—be subject to taxation?

The argument of the appellants makes exemption from taxation almost an impossibility, for it cannot be had except in the case where property purchased by a corporation, having the right of exemption, shal be purchased from another corporation having a like exemption. In other words, if the property of one corporation is to be exempted, then it can only enjoy that exemption by purchasing from some other which was equally entitled to the same exemption.

So that the right to have property exempt is confined to the case where it is so, not under the privilege given to the purchaser, but because it was already exempt when he bought it.

It is enough to exhibit this fallacy to ask if property exempted is bought by one whose property is not exempted, will the privilege of the former owner follow it into the hands of one who did not have that privilege?

But this exemption from taxation, in the argument of the appellants, is regarded, not as a privilege granted to the person, following the person, and attaching, because of the person, to the property owned by him; but as a quality irrespective of the person, inherent in the property itself, and following the property in the hands of any one to whom it may come.

When the property of the South Carolina Canal and Railroad Company came into the possession of the South Carolina Railroad

Company, exemption from taxation did not depend upon the existence of a right to such exemption in the person to whom it did belong, but upon the existence of that exemption in the person to whom it belonged after the purchase.

The exemption of the property depends upon the right of the owner, and is in nowise appurtenant to the property itself.

The sole question, therefore, in this case is, whether the South Carolina Railroad did or did not have in its charter, in clear and unambiguous terms, an exemption of the property belonging to that corporation from taxation.

If that is so, until, in proper proceedings instituted for that purpose, this right is, by the course of judicial proceedings, taken from it, and by proceedings wholly different from such as are now before the court, the exemption will be sustained.

In conclusion, we refer again to the plain construction given to the Acts of the Legislature under which the questions in this case are now made by the courts of the State. We have the decisions of those courts to the effect that the South Carolina Railroad has all the rights and privileges which belonged to the South Carolina Canal and Railroad Company under its charter of 1828, or the Louisville, Cincinnati, and Charleston Railroad Company under its charter of 1835.

In another case, that the Act of 1843 did not affect the rights or privileges of the South Carolina Railroad Company under the charter of the Louisville, Cincinnati, and Charleston, Railroad Company, except by adding to them those of the South Carolina Canal and Railroad Company. That the operation of the Act of 1843 was to extend the charter of the Louisville, Cincinnati, and Charleston Railroad Company over all the road possessed by the South Carolina Railroad Company, in the same sense and with the same effect as that charter would have done if the road had been entirely constructed, instead of purchased, by that Company. And later still, to the emphatic repetition of the same conclusion by the court of errors for the State.

The case, therefore, is presented with the adjudication by the courts of the State of all the questions now brought before this court. And this court has, in positive terms, decided that, with the exception of cases in which the State courts adjudge that not to be a contract which is alleged to be one, within the meaning of the Constitution of the United States, when it inhibits a State from impairing the obligation of a contract; the construction by

State courts of State legislation is conclusive with it. (Jefferson Branch Bank *v.* Skelly, 1 Black, 443; Leffingwell *v.* Warren, 2 Black, 599.)

We submit that the appeal must be therefore dismissed.

1. The property of that South Carolina Railroad Company is not in law or in fact the property of the South Carolina Canal and Railroad Company. As the property of the South Carolina Railroad Company it was obtained by the consent and with the authority of the State of South Carolina, and such consent and authority were given without qualification or condition. Such qualification or condition as would cause it to be held by the South Carolina Railroad Company otherwise than other property of that corporation is not expressed in the grant, nor is it implied in law. (2 Wash., Real Property, 3; 4 Kent Comm., 127; Penn. College cases, 13 Wall., 213.)

2. Whether the South Carolina Railroad Company abused or misused any privilege or franchise in its charter, is a question which can be tried only in proceedings to which the State is a party. Such proceedings are not within the jurisdiction of the courts of the United States. And the City Council of Charleston have no right to institute such proceedings, nor can they be instituted except at the instance of the State and by proceedings instituted for that purpose, to which the State is a party. (A. & A. Corp., Sec., 636, 777; Terrett *vs.* Taylor, 9 Cranch, 52; 2 Kent Comm., 367; Slee *vs.* Bloom, 5 J. C. R., 378.)

3. The acts of 1865 and 1866 relate to matters not affecting the charter of the South Carolina Railroad Company. They applied solely to the extension of the time for payment of the debt of the Louisville, Cincinnati, and Charleston Railroad Company in 1837. They were nothing more than the understanding and agreement between the State, the South Carolina Railroad Company, and the creditor for the extension of the time for payment of a past-due debt. And this in no manner brought the charter within the operation of the 41 section of the act of 1841.

In addition to this, the ordinance of the Convention which framed the constitution of 1866 suspended and made inoperative these acts until the General Assembly shall ratify the same.

A. G. MAGRATH,
Counsel for Appellees.

SUPREME COURT OF THE UNITED STATES.

No. 474.

CITY COUNCIL OF CHARLESTON AND GEO. ADDISON,
APPELLANTS,
vs.
MORRIS K. JESSUP, APPELLEE.

BRIEF ON PART OF APPELLANTS.

The Appellee, on 15th day of February, 1871, filed his Bill in the Circuit Court for the District of South Carolina, praying for injunction and relief. Record F. 5.

The Bill in the usual form alleges—

1. Ownership of 3,946 Shares of the Capital Stock of the Northeastern Railroad Company, a corporation created under the laws of South Carolina, and doing business in said State. R. F. 5.

2. The right of taxation vested in the City Council of Charleston. R. F. 6. 1

3. That George Addison holds the office of City Sheriff, and has authority to enforce payment of taxes levied by said City Council of Charleston, including the power of levy and sale of the property of the persons resident, and corporations doing business within the limits of said City. R. F. 6.

4. The exemption from taxation of the stock and real estate of the Northeastern Railroad Company, by an Act of the General Assembly of South Carolina, passed December 19, 1855, entitled, "An Act to amend the charter of the Northeastern Railroad Company, and for other purposes." R. F. 7. 2

5. The taxation of the depots, Railroad yard, wharves, and other property of the Northeastern Railroad Company, by the City Council of Charleston. R. F. 9.

6. The issuing of execution for the amount of said taxes by the City Treasurer of Charleston, and the attempt of George Addison, City Sheriff, to levy the same on the property of the Northeastern Railroad Company. R. F. 9.

7. The refusal of the Northeastern Railroad Company to resist the collection of the said tax. R. F. 10.

3

On the 20th day of April, 1871, the Appellants filed their answer, in which they set forth, in substance:

1. That the Act of December 19, 1855, entitled, "An Act to amend the charter of the Northeastern Railroad Company, and for other purposes," on its face, purports to exempt the stock and real estate of the Northeastern Railroad Company from taxation. R. F. 14.

2. That the property of the said Northeastern Railroad Company was taxed by the City Council of Charleston for the year 1870, and execution was issued therefor. R. F. 14.

4 3. That the charter of the Northeastern Railroad Company was, at the time of its incorporation in December, 1851, and ever since has been subject to amendment, alteration and repeal, by virtue of the provisions of the 41st Section of the Act of the General Assembly of South Carolina, approved December 17, 1841, which Section, by its own force, became a part of the charter of said Company. R. F. 15.

4. That the privileges conferred by the said Act of Dec. 19, 1855, (purporting to exempt the property of the Northeastern Railroad Company from taxation,) were conferred, subject to the terms of the said 41st Section of the Act of Dec. 17, 1841,
5 and could at any time be revoked, at the pleasure of the State. R. F. 16.

5. That by the provisions of the Act of the General Assembly of South Carolina, approved March 1, 1870, entitled "an Act to enforce a uniform system of assessment and taxation by municipal bodies," the City Council of Charleston was authorized and required to assess all property within the corporate limits of the city at its actual value. That under the provisions of this Act, the property of the Northeastern Railroad Company was subject to taxation by the said City Council for
6 the year 1870. R. F. 16.

6. The Ordinance of March 22, 1870, of said City Council of Charleston, providing for the assessment of a tax of two cents upon the dollar, of the value of all real and personal property in the City of Charleston. R. F. 17.

7. The taxation of the real property of the Northeastern Railroad Company, in the City of Charleston, under authority of said Ordinance, amounting to $2,100, and non-payment of the same by the Company. R. F. 17.

8. The penalties for non-payment of said tax. R. F. 18.

9. The assessment of the tax upon the real property only of 7
said Northeastern Railroad Company. R. F. 20.

On the 25th April, 1871, the Northeastern Railroad Company filed its separate answer, in which it was set forth in substance:

That the allegations contained in the appellee's bill of complaint were correct, and that the Company is powerless under the laws of South Carolina to prevent the sale of the property. R. F. 23, 24 and 25.

8

The appellee filed a general replication. R. F. 27, 28.

The pleadings being completed, the cause came on to be heard thereon. The appellants, at the final hearing, admitted the ownership of the stock by the appellee. R. F. 28. 9

After argument, the Court filed its decree, (April 27, 1871,) ordering a perpetual injunction to issue, enjoining and restraining the City Council of Charleston from collecting the taxes levied, and from making further assessment of taxes. R. F. 29.

The appellants at the said April Term of the Circuit Court appealed from the final decree of the Court, dated April 27, 1871, and said appeal was allowed. R. F. 31.

The Northeastern Railroad Company was duly cited to join in the said appeal, but said Company filed a notice that they 10

were content with the decree, and severed from their co-defendants in the Circuit Court on said appeal.

On the 20th of July, 1871, the Court ordered that the City Council, of Charleston, and George Addison, have leave to appeal without joining the Northeastern Railroad Company with them as appellants. R. F. 33 to 37.

11 ASSIGNMENT OF ERRORS.

The Court erred in ordering a perpetual injunction to issue against the appellants restraining them from collecting taxes assessed and levied upon the property of the Northeastern Railroad Company, and from further assessments and levies thereon; because,

1. By the provisions of the 41st Section of the Act of December 17, 1841, of the State of South Carolina, which is as follows:

12 "That it shall become part of the charter of every corporation which shall, at the present, or any succeeding session of the General Assembly, receive a grant of a charter, or any renewal, amendment or modification thereof, (unless the Act granting such charter, renewal, amendment or modification, shall in express terms except it,) that every charter of incorporation granted, renewed or modified, as aforesaid, shall at all times remain subject to amendment, alteration, or repeal by the Legislative authority;" it was a part of the Charter of the Northeastern Railroad Company, granted December 16, 1851, that said charter and any amendment thereof, should at all times remain
13 subject to amendment, alteration, or repeal by the Legislative authority as neither in said charter nor in the subsequent amendment thereto, of December 19, 1855, is the Northeastern Railroad Company, in express terms, excepted from the operation of the said 41st Section of the Act of 1841.

2. Said charter, and the amendment thereto, being thus subject to alteration, amendment or repeal, the same was altered,
14 or amended, by the 8th Section of Article 9, and Section 2

of Article 12 of the Constitution of South Carolina, ratified April 14th, 15th and 16th, 1868, which are as follows:

"Article 9. Section 8. The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. And the General Assembly shall require that all the property, except that heretofore exempted within the limits of 15
municipal corporations, shall be taxed for the payment of debts contracted under authority of law;"

"Art. 12. Sec. 2. The property of corporations now existing, or hereafter created, shall be subject to taxation, except in cases otherwise provided for in this Constitution;"

And also by the Act of the General Assembly of South Carolina, approved March 1, 1870, entitled "An Act to enforce a uniform system of assessment and taxation by municipal bodies;" which is as follows:

"Whereas, It is provided by Section 1, Article IX, of the 16
Constitution, that the General Assembly shall provide, by law, for an uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory except mines and mining claims, the proceeds of which alone, shall be taxed, and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes; and,

"Whereas, It is provided by Section 8 of the same Article, that the corporate authorities of counties, townships, school 17
districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform, in respect to persons and property, within the jurisdiction of the body imposing the same. And the General Assembly shall require that all the property, except that heretofore exempted within the limits of municipal corporations, shall be taxed for the payment of debts contracted under authority of law; and,

"Whereas, It is further provided by Section 2, Article XII, of the Constitution, that the property of corporations now existing, or hereafter created, shall be subject to taxation, 18

except in cases otherwise provided for in this Constitution ; therefore,

Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by authority of the same:

Section 1. "That all municipal corporations, created under or by the laws of this State, and vested with the power to lay and collect taxes, are hereby authorized and required to assess
19 all property, real and personal, within their corporate limits, at its actual value, and lay all taxes thereon, at a uniform and equal rate: *Provided*, that all property, and no other, exempted from taxation by the third Section of the Act, entitled 'an Act to provide for the assessment and taxation of property, ratified the 15th day of September, A. D. 1868, shall be exempted from taxation by municipal corporations,'"

ARGUMENT.

20 I. The Act relied on by the Appellees to secure their exemption from taxation, is as follows:

AN ACT TO AMEND THE CHARTER OF THE NORTHEASTERN RAILROAD COMPANY, AND FOR OTHER PURPOSES.

I. Be it enacted by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That the stock of the Northeastern Railroad Company, and the real estate that it now owns or may hereafter
21 acquire, which is connected with or subservient to the works authorized in the Charter of the said Company, shall be and the same is hereby exempted from all taxation during the continuance of the present Charter of the said Company.

II. That the following officers and persons, while in the actual employment of any Railroad Company in this State, shall be exempt from the performance of ordinary militia duty, and from service on juries, viz: the Chief Engineer and Assistant Engineer, the Superintending Officer, the Secretary and Treasurer of the Directors, the Keeper of the Depository, the guard stationed on the road to protect it from injury, (not exceeding
22 one white man to every five miles,) and such persons as may

be actually employed in working the locomotive engines, and in traveling with cars for the purpose of attending to the transportation of passengers or goods on the said roads, not exceeding one white engineer and his white assistant to each engine, and one white person to each passenger car, and to every five cars for the transportation of goods.

III. That the existing structure of said Railroad at the points of intersection of said road with the Creeks, known as New Market and Vardell's Creeks, is hereby declared to be lawful, and said Company is hereby authorized to cross said Creeks without drawbridges or other provision for the navigation of the same: *Provided*, That no private rights be taken away or impaired, but upon proper compensation, assessed as is usual in such cases.

23

In the Senate House, the nineteenth day of December, in the year of our Lord one thousand eight hundred and fifty-five, and in the eightieth year of the sovereignty and independence of the United States of America.

24

In reference to this Act, it is [redacted] urged, that it is not a contract, but a privilege in the nature of a gratuity, and hence subject to alteration or repeal by the Legislature.

It is the fundamental condition of all contracts that they must be founded upon a sufficient consideration.

2 Kent, 463; Railroad Bank *vs.* Nesbit, 2 Spears, 697.

In this case no consideration whatever enters into the subject-matter of the grant. "Every contract, in the nature of a charter of incorporation, presupposes that some consideration is given or supposed to be given by the corporation; that the community is to receive from it some public benefit which it could not obtain without the aid of the Company."

25

Ohio Life Insurance and Trust Company *vs.* Debolt, 16 How., 437.

The Northeastern Railroad Company had, by the Act of 1851, already contracted with the State for a sufficient consideration for certain rights, powers and privileges, which were to last for fifty years, subject to the reserved power of the Legislature of alteration, amendment or repeal under the 41st Section of the Act of 1841. Upon such consideration, the Company proceeded to build the railroad authorized to be built by

26

their charter, and to exercise the powers and privileges incident to their existence. Four years after the consummation of this contract, the State gives, of its own accord, a new privilege to the Company not contemplated in the original charter, and without exacting a single new service or duty. No public benefit was to be derived from this grant, and no trouble or burden was imposed on the Company. On the contrary it released the
27 corporation from a public burden, which is imposed upon all *natural* persons holding property within its limits.

In no just sense can such a privilege be construed as a contract. Had this exemption from taxation for the period for which the Company was incorporated been a part of the original charter of incorporation, or had new duties been imposed upon them in consequence of this exemption, there might be reason for holding such a grant as a contract. "Such an exemption as would deprive the Legislature of the power of taxation, could only be claimed on the ground that it did *at the time of the grant* form a condition, or else a consideration of such grant, for it is
28 only to that extent that legislative grants have been considered contracts within the meaning of the United States Constitution, prohibiting the State from passing any law impairing the obligation of contracts."

Herrick *vs.* Rutland, 13 Vt., 530.

The decisions in regard to the right of the Legislature to
29 grant perpetual exemption from taxation to corporations and property, the title to which is derived from the State, "do not affect to justify even this express exemption from taxation, being held inviolable, except upon the ground that it formed a part of the value of the grant for which the State received or stipulated for a consideration."

Thorpe *vs.* Rutland and Burlington R. R. Co., 27 Vt., 146.

This concession of the Legislature was spontaneous, and no service or duty, or other condition was imposed upon the corporation. Such concession belongs to the class of laws denominated *privilegia favorabilia*. They exist *bene placitum*, and may be revoked at the pleasure of the sovereign.

Rector, etc., of Christ Church, Philadelphia *vs.* The County of Philadelphia, 24 How., 300, and cases there cited.

30

Having shown that the privilege is not a contract, because of *future* services to be performed by the corporation, it is equally clear that the Company can not claim that the privilege is irrevocable, because of the performance of *past* services rendered by them. "The rule of law seems to be now well settled that the past performance of services constitutes no consideration even for an express promise."

Dearborn *vs.* Bowman, 3 Met., 153. 31
Shepard *vs.* Young, 8 Gray, 153.
Nesbit *vs.* Railroad Company, 2 Spears, 697.

"It is only when the party making the promise gains something, or he to whom it is made loses something, that the law gives the promise validity."

Mills *vs.* Wyman, 3 Pick., 211.

32

II. The charter of the Northeastern Railroad Company was, at the time of the adoption of the new State Constitution of 1868, and, also, at the time of the passage of the Act of Assembly of March 1, 1870, (above quoted,) subject to amendment, alteration, or repeal by the legislative authority of the State of South Carolina.

Wales *vs.* Stetson, 2 Mass., 146. 33

In the matter of Oliver Lee & Co.'s Bank, 21st N. Y., 9; affirmed by Supreme Court United States in Sherman *vs.* Smith, 1 Black., 587.

Schenectady and Saratoga Plank Road Co. *vs.* Thatcher, 11th N. Y., 102.

In the matter of the Reciprocity Bank, 22d N. Y., 9.

The Buffalo and N. Y. City Railroad Co. *vs.* Dudley, 14th
34 N. Y., 354.

State *vs.* Addison, 2d S. C., 499.

Comr's. on Inland Fisheries *vs.* Holyoke Water Power Co., 104 Mass., 446.

Providence Bank *vs.* Billings, 4 Pet., 514.

III. The charter of the Northeastern Railroad Company has been so amended as to subject its property to taxation by the City Council of Charleston.

The Constitution of the State of South Carolina, Sec. 8, Art.
35 9, and Sec. 2, Art. 12, and the Act of March 1, 1870, above cited, do this.

Wolsey *vs.* Dodge, 6th McLean, p. 145.

Ohio Life Insurance and Trust Company *vs.* Debolt, 16th Howard, p. 428.

Railroad Company *vs.* McClure, 10 Wal., 515.

State *vs.* Addison, 2d S. C., 508.

D. T. Corbin
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D. T. Corbin
Sol. Attys. & Counsel
P. Phillips

SUPREME COURT OF THE UNITED STATES,

No. 474.

THE CITY COUNCIL OF CHARLESTON and GEORGE ADDISON, *Appellants*,

vs.

MORRIS K. JESSUP, *Appellee*.

Brief on Part of Appellants.

D. T. CORBIN,

Attorney for Appellants.

Walker, Evans & Cogswell, Printers, Charleston, S

Supreme Court of the United States.

No.....

THE CITY COUNCIL OF CHARLESTON, STEPHEN THOMAS, AND GEORGE ADDISON, APPELLANTS,

vs.

THOMAS BRANCH, JOHN P. BRANCH, FREDERICK K. SCOTT, AND THOMAS P. BRANCH, AS BRANCH SONS & CO., APPELLEES.

ARGUMENT ON THE PART OF APPELLANTS.

BILL FOR INJUNCTION AND RELIEF.

The Appellees, Plaintiffs in the Court below, in their Bill of Complaint in the usual form, allege substantially:

1. That they are owners of shares of stock in the SOUTH CAROLINA RAILROAD COMPANY.

R. f. 6.

2. That said Company was incorporated in 1835, under the name of the CINCINNATI AND CHARLESTON RAILROAD COMPANY. That in 1837 the name of the Company was changed to the LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY, and in 1843, this name was changed to the SOUTH CAROLINA RAILROAD COMPANY.

R. f. 7.

3. That in December, 1827, the SOUTH CAROLINA CANAL AND RAILROAD COMPANY was incorporated.

R. f. 7.

4. That in December, 1843, it was enacted by the General Assembly of South Carolina that whenever the written consent of the stockholders of the said SOUTH CAROLINA CANAL AND RAILROAD COMPANY should be obtained, the said last named Company should be merged in the said SOUTH CAROLINA RAILROAD COMPANY, and thereafter all the rights, privileges and property of the South Carolina Canal and Railroad Company should be vested in the South Carolina Railroad Company, and the latter Company should be liable for the debts of the former. That said consent had been obtained, and the South Carolina Canal and Railroad Company been merged into the South Carolina Railroad Company previous to January 1, 1870, and the rights, privileges and property of the former Company became vested in the latter.

R. f. 8.

5. That the Cincinnati and Charleston Railroad Company, now the South Carolina Railroad Company, was, when created in 1835, declared to have corporate existence "in perpetuity."

R. f. 8.

6. That by the 43d Section of said Act, it was declared that the capital stock in said Company, the dividends thereon, and all the property, real and personal, belonging to said Company should be forever exempt from taxation, &c.; provided that the said stock or dividends, when the said dividends shall exceed the legal interest of the State, may be subject to taxation.

R. f. 9.

7. That said Act is part of the charter of the South Carolina Railroad Company, and constitutes a contract between the State of South Carolina and said Company.

R. f. 9.

8. That the General Assembly of South Carolina, by an Act passed on the 1st March, 1870, declared that all property, real or personal, situated within the limits of municipal corporations, shall be liable to taxation by said corporations. That in pursuance of the pretended authority of this Act, the City Council of Charleston has imposed a tax of $8,648.00 on the property of the South Carolina Railroad Company, situate in the City of Charleston,

and has issued execution against said property; also threatens to levy a large sum by way of penalty for non-return of property for taxation and non-payment of tax.

R. f. 10.

9. That said Act of March 1, 1870, is in violation of the Constitution of the State of South Carolina, that declares "that the General Assembly shall require that all the property, except that heretofore exempted within the limits of the municipal corporations, shall be taxed for the payment of debts contracted under authority of law;" that it is also in violation of the 1st Section of the 1st Article of the same Constitution, which declares that no law impairing the obligation of a contract shall ever be enacted; that it is also in violation of the Constitution of the United States, which forbids any State to pass any law impairing the obligation of contracts.

R. f. 11.

10. That they are injured as stockholders of the South Carolina Railroad Company; that application was made to the Company to resist payment of tax, but the Company refused, alleging that under the laws of South Carolina they could not do so.

R. f. 12.

11. Prayer for injunction against City Council of Charleston, &c.

R. f. 13.

On the 3d day of January, 1871, a preliminary injunction was granted restraining the City Council of Charleston from collecting the tax.

R. f. 14, 15.

Writs will be found in Record f., 16, 17, 18, 19 and 20.

On the 15th March, 1871, the appellants filed their answer in the usual form, in which they say in substance:

1. That they do not admit ownership of shares in South Carolina Railroad Company by complainants.

R. f. 23.

2. They admit that the Cincinnati and Charleston Railroad Company was incorporated by the laws of South Carolina, December 19, 1835; that the name of the Company was changed December 21, 1836, to the Louisville, Cincinnati and Charleston Railroad Company, and that on the 19th day of December, 1843, this last name was changed to the South Carolina Railroad Company; also, that the South Carolina Canal and Railroad Company was incorporated December 18, 1827; also, that by said Act of December, 1843, provision was made for merging the said South Carolina Canal and Railroad Company into the South Carolina Railroad Company, and that prior to the year 1870, the said South Carolina Canal and Railroad Company had been so merged with all its rights, privileges and property.

R. f. 23, 24.

3. They admit that the Cincinnati and Charleston Railroad Company when created in 1835, was declared to have corporate existence "in perpetuity when formed," and that by 43d Section of said Act, it was declared that the capital stock of said Company, the dividends thereon, and all the property, both real and personal, should be forever exempt from taxation.

R. f. 24.

4. They admit taxation of the real property of South Carolina Railroad Company, for the year 1870, and that execution has issued against said property, &c.

R. f. 25.

5. That it appears by the Act to incorporate the Cincinnati and Charleston Railroad Company, that the object of the charter was for the purpose of establishing communication by railroad between the Cities of Cincinnati, in Ohio, and Charleston, in South Carolina, through the States of Kentucky, Tennessee, North Carolina, and South Carolina. That the said Cincinnati and Charleston Railroad Company (whose name was changed in 1843, to the South Carolina Railroad Company) has not exercised the rights conferred on it by said charter for the purpose of establishing communication by railroad between Charleston and Cincinnati, &c., but to establish such communication, have wholly neglected and failed to do.

R. f. 26, 27.

6. That under the said Act of 1843, the South Carolina Railroad Company acquired possession of the South Carolina Canal and Railroad Company, with the rights, powers and privileges pertaining to said latter Company, among which were the right of construction of a railroad from the City of Charleston to each of the towns of Columbia, Camden and Hamburg; also, the exclusive right to make, keep up and use the said railroad for the term of thirty-six years; the right, after the said term of thirty-six years shall have elapsed, to remain and be incorporated and vested with all the estate, powers and privileges, as to their ownership, granted and secured by the Act, entitled "An Act to amend an Act entitled 'An Act to authorize the formation of a Company for constructing Railroads or Canals from the City of Charleston to the towns of Columbia, Camden and Hamburg,'" ratified the 30th day of January, 1828; and the privilege of exemption from taxation of the stock of the Company and the real estate that may be purchased by them and connected with, and subservient to the works authorized by their charter and the Act amendatory thereof, for the first period of thirty-six years of its corporate existence. The said first period of thirty-six years of the corporate existence of said Company expired before the year 1870. The real estate of the said South Carolina Railroad Company, within the limits of the City of Charleston, was acquired under and by virtue of the charter of the South Carolina Canal and Railroad Company, and is not, nor has it been since the said period of thirty-six years expired, exempted from taxation, because of the provisions of the forty-third section of the Act to incorporate the Cincinnati and Charleston Railroad Company.

R. f. 26, 27, 28, 29, 30, 31.

7. That the charter of the South Carolina Railroad Company is subject to the provisions of the 41st Section of the Act of December 17, 1841, which is as follows: "That it shall become part of the charter of every corporation which shall at the present, or any succeeding session of the General Assembly, receive a grant of a charter, or any renewal, amendment or notification thereof, (unless the Act granting such charter, renewal, amendment or

modification, shall, in express terms, except it,) that every charter of incorporation granted, renewed, or modified as aforesaid, shall, at all times, remain subject to amendment, alteration or repeal by the legislative authority." That the said South Carolina Railroad Company has had amendments and modifications of its charter by the following named Acts of the General Assembly, which Acts did not, in express terms, except the charter of said Company from the legislative authority of amendment, alteration, or repeal; namely :

1. "An Act to lend the credit of the State to secure certain bonds, *to be issued* by the South Carolina Railroad Company, and for other purposes," passed December 21, 1865. (Acts of 1865, p. 104.)

2. An Act to amend the Act last aforesaid, passed the 19th day of September, 1866. (St. at Large, vol. 13, p. 377.)

R. f. 32, 33.

8. The alleged contract between the State of South Carolina and the said South Carolina Railroad Company, by virtue of which the property of the said Company is *forever* exempted from municipal taxation, never existed. That said contract was for a limited period merely, and also dependent upon the condition that if the said Company should have any grant, renewal, or modigcation of its charter by Act of the General Assembly, its charter should be subject to amendment, alteration or repeal by the legislative authority, unless specially exempted from such alteration or repeal.

R. f. 34, 36.

9. That the first period of thirty-six years (during which the capital stock and property of the South Carolina Canal and Railroad Company was exempted from taxation) expired previous to the year 1870, and thereafter all the property, real and personal, situate within the limits of the City of Charleston, became subject to taxation by the City Council of Charleston under the provisions of the Act of March 1, 1870.

R. f. 37, 34.

10. The Ordinances of the City Council of Charleston, under which the property of the South Carolina Railroad was taxed to the amount of $7,385, &c., and under which penalties for non-payment thereof were added, are set forth.

R. f. 34, 35, 38, 39.

11. The tax was assessed on the *real* property only of the South Carolina Railroad Company, as it never made a return of its personal property for taxation.

R. f. 40.

On the fifth day of April, 1871, the South Carolina Railroad Company filed their answer in which they say in substance:

1. That on the 19th day of December, 1827, the South Carolina Canal and Railroad Company was incorporated for the construction of a canal or railroad, or a canal and railroad, from Charleston to each of the towns of Columbia, Camden and Hamburg.

R. f. 43.

2. That by the Act of January 30, 1828, the said Act of December 19, 1827, was amended, giving powers to construct a railroad to the Savannah River, at or near Hamburg, and with power to construct branches to Columbia and Camden, &c.

R. f. 43.

3. That in pursuance of powers thus granted, the South Carolina Canal and Railroad Company organized and built a railroad from Charleston to Hamburg.

R. f. 43.

4. That on the 19th December, 1835, the Cincinnati and Charleston Railroad Company was incorporated "for the purpose of establishing communication by railroad between the cities of Cincinnati, Ohio, and Charleston, in the State of South Carolina," and said Company was duly organized.

Ref. 44.

5. That by Act of December 21, 1836, the name of the said corporation was changed to the Louisville, Cincinnati and Charleston Railroad Company, and again on the 19th December, 1843, the name of this corporation was changed to the South Carolina Railroad Company.

R. f. 44.

6. That in 1837, the South Carolina Railroad Company, then called the Louisville, Cincinnati and Charleston Railroad Company, purchased the capital stock of the South Carolina Canal and Railroad Company, and thereby became the owners of all the property, rights and privileges of said Company, and thereupon the Louisville, Cincinnati and Charleston Railroad Company built the road from Charleston to Branchville, and extended the same to Columbia. That said purchase was with the assent of the State of South Carolina.

R. f. 45.

7. The Act of December 20, 1842, entitled "An Act to unite the South Carolina Canal and Railroad Company and the Louisville, Cincinnati and Charleston Railroad Company into one corporation," was not accepted, because it contained no provision excepting said corporation from the operation of the 41st section of the Act of December of 1841.

On the 19th December, 1843, an Act was ratified by which the name of the Cincinnati and Charleston Railroad Company was changed to the South Carolina Railroad Company and said Act provided that by the written consent of all the stockholders of the South Carolina Canal and Railroad Company, said Company should be merged in the South Carolina Railroad Company, and thereupon the rights, privileges and property of said Company shall be vested in said South Carolina Railroad Company.

R. f. 46, 47.

8. That said Act of 1843, and all acts thereafter passed relating to said corporation, expressly excepted said corporation from the provisions of the 41st section of the Act of 1841.

R. f. 47.

9. That the 19th section of the charter of the South Carolina Railroad Company, provides "That the said Company may con-

struct branches of their road ; provided said branches shall not conflict with any chartered rights existing at the time of their construction," &c.

R. f. 48.

10. That by an Act of December 18, 1844, the South Carolina Railroad Company was authorized to open a subscription for new stock to be employed in the construction of a branch to Camden; that the stock was subscribed and the branch to Camden built.

R. f. 48.

11. That by the 32d section of the charter of the South Carolina Railroad Company, said Company was authorized to purchase and hold real and personal estate, necessary for said road, and by the 43d section the capital stock in said Company, and the real and personal estate belonging to said Company, shall be forever exempt from taxation, &c.

R. f. 49, 50.

12. That heretofore, no tax or assessment has been made or laid by State or municipal authority, upon the real or personal property of said corporation, but the exemption of said property from taxation has been uniformly conceded.

R. f. 50.

13. That the City Council of Charleston has assessed a tax upon the capital stock and property, real and personal, of the Company, and has issued execution to collect said tax, and is about to levy on and sell the real and personal property of the Company to pay the same.

R. f. 51.

14. That all Acts which authorize a tax on the property of the South Carolina Railroad are in violation of the Constitution of the State and of the United States, as impairing the obligation of contracts.

R. f. 52.

On the 31st March, 1871, the complainants filed their replication to appellants' answer in the usual form.

At the April term, 1871, of the Circuit Court, the cause came on to be heard upon the pleadings, except as follows: Appellants admitted ownership of shares of capital stock of South Carolina Railroad Company, by complainants in the court below, and the South Carolina Railroad Company submitted extracts from records of the South Carolina Canal and Railroad Company, and of the Louisville, Cincinnati and Charleston Railroad Company, showing negotiations that preceded amalgamation of the two companies, also statement showing date of purchase of certain parcels of real estate within the limits of the city of Charleston.

R. f. 56 to 71.

From the pleadings the following facts appear to be admitted:

That in 1827, the South Carolina Canal and Railroad Company was incorporated. The Act of Incorporation is as follows: (Stat. at Large, vol. 8, p. 354-5.)

AN ACT TO AUTHORIZE THE FORMATION OF A COMPANY FOR CONSTRUCTING RAILROADS OR CANALS FROM THE CITY OF CHARLESTON, TO THE TOWNS OF COLUMBIA, CAMDEN AND HAMBURG.

I. *Be it enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same.

1. The formation of a corporate company is hereby authorized, for the construction of a Railroad or a Canal, or a Railroad and Canal, from the City of Charleston, on the most practicable routes, to each of the towns of Columbia, Camden and Hamburg; and that the formation, organization, and subsequent proceedings of said company, shall be according to the provisions of an Act, passed during the present session, entitled "An Act to establish the principles on which companies shall be incorporated, and the charters of ferries, bridges and turnpike roads, shall hereafter be granted;" and that the said company shall be entitled to all the rights and protection granted by the said Act to turnpike companies on the conditions of said Act; *provided*, that nothiug contained in said Act shall be construed so as to prevent the said

company hereby authorized to be formed and incorporated, from constructing all such engine, toll and ware houses, and from purchasing such amount of real estate, as shall be incidental and necessary to the construction of the several works contemplated by this Act.

2. The said company shall be called "The South Carolina Canal and Railroad Company;" and the capital stock thereof shall be composed of seven thousand shares, with the right of increasing said capital, (by sale or subscription,) to an amount not exceeding twenty thousand shares.

3. The said company, after being duly organized and incorporated, shall, at all times, have power to invest any surplus stock on hand, in any public stock bearing interest, until the same may be required for meeting the contracts entered into.

4. The said company shall, at all times, have the exclusive right of transportation on all the several Railroads to be by them constructed; *provided*, the charge for the transportation of goods, produce, &c., shall not exceed thirty-five cents per hundred pounds, on heavy articles, and ten cents per cubic foot, on articles by measurement, for every one hundred miles, and five cents per mile, on every passsnger, and at the above rates for any greater or less distance; *provided also*, the said company may rent or farm out all or any part of their exclusive right of transportation above secured, to any individual or other company, subject to the restrictions of the above proviso.

5. The said company may, when they deem it most expedient, open all or any of their said Canals or Railways to public use, and may establish suitable rates of toll on the same; but shall not derive therefrom an annual income, clear of expense, exceeding twenty-five per cent. on the cost thereof.

6. The rights and privileges of the company hereby authorized to be formed and incorporated, shall be sole and exclusive for the term of thirty-six years; and no other person, persons or incorporation, shall have the right of constructing any Railroad or Canal communication, from the city of Charleston, to either of the towns of Columbia, Camden or Hamburg, or to any other point on the Savannah river, during this time, without the consent

of this company; *provided*, the said company shall commence the Canals and Railroads, either or all of them, as herein authorized, within two years, and shall complete the same within six years; and *provided also*, that on failure to commence either of the above Railroads or Canals within the time limited, or on neglect to keep the same in repair after constructed, for the period of two years together, such failure or neglect shall be deemed a forfeiture of this charter, as to such Railroad or Canal.

This act was amended in the following year, (1828) by an Act (declared to be a public Act,) entitled "An Act to amend an Act entitled an 'Act to authorize the formation of a company for constructing railroads or canals from the city of Charleston to the towns of Columbia, Camden and Hamburg.'" The first, thirteenth and fourteenth sections of this Act are as follows: (Stat. at Large, vol. 8, pp. 355 and 361.)

SECTION I. *Be it enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That the company provided for in the aforesaid Act, and hereinafter more especially incorporated and authorized, shall and may direct and confine their first efforts and enterprize to the formation and completion of the railroad communication between Charleston and the Savannah river, at or near Hamburg, and other points or places on said river, by branch or branches of the said railroad, in the manner hereinafter mentioned; and when such communication shall be completed, or before, if the said company shall find it practicable and advantageous, they shall have power and authority to lay off and construct branches thereof to Columbia and Camden, or to the most convenient points at or near these towns, or otherwise construct railroad or railroads between these two towns and Charleston; and the right to make, keep and employ such railroads shall be vested in the company herein and hereby incorporated, exclusively; and for the term of time hereinafter mentioned, no other communication between Charleston and Savannah river, at or near Hamburg, or the waters of the Savannah river, or the towns of Columbia and Camden, or to any point on the rivers at or near

the same, by other railroads or newly constructed canals, shall be constructed by or under the authority of this State.

SEC. XIII. *And be it further enacted* by the authority aforesaid, That whensoever the company aforesaid shall see fit to farm out, as aforesaid, to any other person or persons, or body corporate, any part of their exclusive right of conveyance and transportation, or shall deem it expedient to open the sail railroad, or any part thereof, to public use, they shall and may adopt and enforce all necessary rules and regulations, and have power to prescribe the construction and size or burthen of all carriages and vehicles, and the materials of which such shall be made, that shall be permitted to be used or to pass on the said railroad, and the locomotive power that shall be used with them.

SEC. XIV. *And be it further enacted* by the authorty aforesaid, The exclusive right to make, keep up and use the railroads and transportations thereby, authorized by this Act, shall be for and during the term of thirty-six years, to be computed from the time when the said railroad from Charleston and Savannah river, at or near Hamburg, shall be completed for transportation. *Provided*, that the subscriptions of stock or shares of the said company, to the amount of at least three thousand five hundred shares, as aforesaid, be filled up within six months from the passing of this Act, and the work from or between Charleston and the place aforesaid, be commenced within two years, and be completed within six years, after the three thousand five hundred shares shall be subscribed. And after the said term of thirty-six years shall have elapsed, though the Legislature may authorize the construction of other railroads or canals, for the trade or intercourse contemplated herein, nevertheless, the South Carolina Canal and Railroad Company shall remain and be incorporated, and vested with all the estate, powers and privileges, as to their own works, herein granted and secured, except the exclusive right to make, keep up and use railroads over and through such parts of the country that shall so have expired by the foregoing limitation. But the Legislature may renew and extend that exclusive right, upon such terms as may be prescribed by law, and be accepted by the said incorporated company. And that during the first period of thirty-six years, the stock of the company, and the real estate that may be purchased by them, and connected

with and be subservient to the works herein authorized, shall be exempted from taxation.

NOTE. This period of thirty-six years ended in 1869. (See Act of December 19, 1833, below.)

By An Act entitled "An Act concerning the South Carolina Canal and Railroad Company," passed December 20, 1832, it was enacted as follows : (Stat. at Large, vol. 8, p. 380.)

II. *Be it further enacted*, That the said Company be, and they are hereby, authorized and empowered to construct a single track of their road, and the necessary number of turnout tracks, from the present termination of their road, at Line street, on Charleston Neck, to the boundary line of the City of Charleston, through any public streets, roads or squares on the said Neck. *Provided*, that no locomotive steam engine be used below Line street ; and *provided, also*, that the railroad be so constructed as not to impede the ordinary passage of carriages and persons along the said roads, streets or squares.

III. *Be it further enacted*, That the City Council of Charleston be, and they are hereby, authorized and empowered to permit the extension and construction of the said road through public streets and lands of the city, under the same restrictions as are contained in the preceding clause.

By An Act entitled "An Act concerning the South Carolina Canal and Railroad Company," passed December 19, 1833, it was enacted as follows : (Stat. at Large, vol. 8, p. 384.)

WHEREAS, for the public benefit, the South Carolina Canal and Railroad Company have constructed, under their charter, a Railroad from Charleston to Hamburg, and may construct branches thereof.

I. *Be it further enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That all lands not heretofore granted to any person, or appropriated by law to the use of the State, within one mile of the centre of the main track of the said road, and the branches thereof that may be constructed, be, and they are hereby, vested in the said Company and their successors forever.

III. *And be it further enacted* by the authority aforesaid, That the provisions of the 12th Section of the Act entitled "An Act to amend an Act to authorize the formation of a Company for constructing railroads or canals from the City of Charleston to the towns of Columbia, Camden and Hamburg," be considered, and the same is hereby declared, to extend as well to the owners of land through which the said road is actually constructed, or may hereafter be constructed, as to other persons; and it shall not be lawful for the owner or owners, or other person claiming under him or them, to avoid the provisions of the said section of said Act, by the plea of *liberium tenementum*, or by any other plea whatever.

On the 19th December, 1835, the Legislature of South Carolina passed an Act, entitled "An Act to incorporate the Cincinnati and Charleston Railroad Company," (Stat. at Large, vol. 8, p. 409,) the first, seventeenth, eighteenth, forty-third and forty-eighth Sections are as follows:

1. *Be it enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That for the purpose of establishing a communication, by railroad, between the cities of Cincinnati, in the State of Ohio, and Charleston, in the State of South Carolina, through the States of Kentucky, Tennessee, North Carolina and South Carolina, the formation of a company, to be called "The Cincinnati and Charleston Railroad Company," is hereby authorized, which, when formed, shall have corporate existence in perpetuity in each of the States aforesaid.

XVII. That the said corporation shall have power and may proceed to construct, as speedily as their means will permit, a railroad, with one or more tracks, to be used with steam, animal or any other power, which shall pass through the States of Kentucky, Tennessee, North Carolina, and South Carolina, so as to form a continuous line of railroad between the cities of Cincinnati and Charleston; the line of which road shall be established by the general board of directors, subject to the control of the stockholders at a general meeting. The said company may use any section of the said railroad, before the whole may be completed, subject to the rates hereinafter mentioned.

XVIII. Neither of the said States of South Carolina, North Carolina, Tennessee, nor Kentucky shall, within the period of thirty-six years from the first day of January, in the year one thousand eight hundred and thirty-six, authorise the construction of any railroad within twenty miles of the railroad so to be constructed by the Cincinnati and Charleston Railroad Company, which shall connect any points or places on their railroad, or which shall run in the general direction thereof, without the consent of the said company.

XLIII. That the capital stock in the said company, the dividends thereon, and all the property and estates, real and personal, belonging to the said company, shall be forever exempt from taxation, in each and every of the said States of South Carolina, North Carolina, Tennessee, and Kentucky; and it shall not be lawful for either of the said States, or any corporate, municipal, police, or other authority thereof, or of any town, city, county, or district thereof, to impose any tax on such stock or dividends, property or estates; *provided*, that the said stock or dividends, when the said dividends shall exceed the legal interest of the State, may be subject to taxation by the State, in common with other money at interest, and interest thereon.

XLVIII. This Act shall be regarded as a public Act, and may be given in evidence as such, in all cases, without special pleading.

On the 21st December, 1836, an Act entitled "An Act to confer banking privileges on the Stockholders of the Louisville, Cincinnati and Charleston Railroad Company, on certain terms and conditions," was passed, the first section of which is as follows :

SECTION 1. *Be it enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That the Railroad Company incorporated in the States of South Carolina, North Carolina, and Tennessee, by the name of "The Cincinnati and Charleston Railroad Company," and in the State of Kentucky, by the name of "The Louisville, Cincinnati and Charleston Railroad Company, shall be called and known as a body corporate, in all the States aforesaid, by the name of "The Louisville, Cincin-

nati, and Charleston Railroad Company." And that the corporators in the said Railroad Company shall form a separate body corporate, in deed and in law, for banking purposes, in such of the States of South Carolina, North Carolina, Tennessee, and Kentucky, as shall assent hereto, and be called and known by the name of "The South Western Railroad Bank." *Provided*, that the assent of not less than three of the said States shall be given hereto, before the said bank shall have corporate existence.

On the 20th day of December, 1837, the Legislature of South Carolina passed an Act entitled "An Act to lend the credit of the State to secure any loan which may be made by the Louisville, Cincinnati and Charleston Railroad Company, and for other purposes," the first section of which is as follows :

I. *Be it enacted*, by the Senate and House of Representatives, now met and sitting in General Assembly, and by authority of the same, That the faith and funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payment of any contract which shall be made for borrowing money, by the Louisville, Cincinnati and Charleston Railroad Company, from any person or persons, Company or Companies, corporation or corporations, to any amount not exceeding two millions of dollars, either in the United States or in Europe ; and when such contract or contracts shall be made, by bond or bonds, certificate or certificates, or other instrument or instruments, signed by the President of the said Company, under its seal, and countersigned by the Secretary thereof, it shall be the duty of the Comptroller-General of this State to endorse thereon, that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contract or contracts, both as it respects the punctual payment of the principal and of the interest, according to the terms of the said contract or contracts ; *provided*, that the interest to be received thereby, and made payable thereon, shall not exceed the rate of five per cent. per annum ; *and provided also*, that the Comptroller-General shall not endorse any such contract, until five hundred thousand dollars shall be

paid to the Company on the stock thereof, in which event, he shall pledge the funds and faith of the State for one million dollars; and when five hundred thousand dollars more shall be paid to the Company on the stock thereof, the Comptroller-General shall pledge the funds and faith of the State for one other million of dollars. (Stat. at Large, vol. 6, 571.)

On the 19th December, 1838, the Legislature passed the following Act, to wit:

AN ACT TO AMEND AN ACT TO LEND THE CREDIT OF THE STATE TO SECURE ANY LOAN WHICH MAY BE MADE BY THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY; AND FOR OTHER PURPOSES.

WHEREAS, by an Act passed on the twentieth day of December, in the year of our Lord one thousand eight hundred and thirty-seven, it was enacted, "that the faith and funds of the State of South Carolina, be, and the same are hereby, pledged to secure the punctual payment of any contract which shall be made for borrowing money by the Louisville, Cincinnati and Charleston Railroad Company, from any person or persons, company or companies, corporation or corporations, to any amount not exceeding two million of dollars, either in the United States or in Europe." *And whereas*, in pursuance of the said Act, certain bonds have been issued by the said company, for the equivalent value of one million of dollars, in sterling money, bearing an interest of five pounds per cent. per annum; and a contract has been entered into by the said company, for the said bonds, bearing date the ninth day of August, one thousand eight hundred and thirty-eight, with the house of Palmers, Mackillop, Dent & Co., of London, which said bonds have been signed by the Comptroller-general of this State, according to the provisions required by the said Act: *And whereas*, the said bonds, for the equivalent value of one million of dollars, part of the said two millions of dollars, make the interest on the said bonds, and the payment of the prin-

cipal thereof, payable at the Agency of the Bank of the United States, in London; and in the said contract, it is agreed, that the interest on the said bonds, and the payment of the principal, shall be made by the said Palmers, Mackillop, Dent & Co., or by the house in London which they may appoint for that purpose, with the concurrence of the said company. *And whereas*, the said company has, by an addition put upon the said contract, sanctioned the payment of the interest and of the principal of the said one million of dollars of bonds, being made by the said Palmers, Mackillop, Dent & Co., or at or by the house in London which they may appoint for that purpose, with the sanction of the said company :

I. *Be it therefore enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That this State adopt the stipulation so made in regard to the payment of the principal and interest of the said bonds, and confirm the same according to the provisions of the said contract.

II. *And whereas*, by the Act aforesaid, it is provided also, "that the Comptroller-general shall not endorse any such contract, until five hundred thousand dollars shall be paid to the company, on the stock thereof, in which event, he shall pledge the funds and faith of the State, for one million of dollars; and when five hundred thousand dollars more shall be paid to the company, on the stock thereof, the Comptroller-general shall pledge the funds and faith of the State, for one other million of dollars." *And whereas*, according to the terms of the said provision, the company will be prevented from availing themselves of any portion of said second loan of one million of dollars, until they obtain the whole thereof, whilst the interests of the company and the progress of the work in which they are engaged, would require that the same should be received from time to time, and in such sums as may be required to carry on their operations : *Be it therefore further enacted*, That the guarantee of the State shall be endorsed by the Comptroller-general, from time to time, on portions of the said bonds, as the company may require them : *Provided*, that the corresponding amount of subscriptions to the railroad company shall have been previously paid in by the stockholders, according to the proportions established by the Act of which this

is an amendment, that is to say: when six hundred and twenty-five thousand dollars shall have been paid as aforesaid, the faith of the State shall be pledged for two hundred and fifty thousand dollars of the loan of the second million; when the sum of seven hundred and fifty thousand dollars shall have been paid, the faith of the State shall be pledged for a further sum of two hundred and fifty thousand dollars; when the sum of eight hundred and seventy-five thousand dollars shall have been paid, the faith of the State shall be pledged for a further sum of two hundred and fifty thousand dollars; and when one million of dollars shall be paid, the faith of the State shall be pledged for the remaining two hundred and fifty thousand dollars, making, in the whole, the sum of one million of dollars, provided by the aforesaid Act. (Stat. at large, vol. 6, 604.)

On the 17th of December, 1841, the Legislature passed an Act entitled "An Act to incorporate certain villages, societies and companies, and to renew and amend certain charters heretofore granted, and to establish the principal on which charters of incorporation will hereafter be granted," the forty-first section of which is as follows:

SEC. XLI. *Be it further enacted*, That it shall become part of the charter of every corporation, which shall at the present, or any succeeding session of the General Assembly, receive a grant of a charter, or any renewal, amendment or modification thereof, (unless the Act granting such charter, renewal, amendment or modification, shall in express terms except it,) that every charter of incorporation granted, renewed, or modified, as aforesaid, shall at all times remain subject to amendment, alteration or repeal by the legislative authority. (Stat. at Large, vol. 11, page 168.)

On the 20th day of December, 1842, the General Assembly of South Carolina passed the following Act, to wit:

AN ACT TO UNITE THE SOUTH CAROLINA CANAL AND RAILROAD COMPANY, AND THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY INTO ONE CORPORATION.

I. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, That the stockholders of the Louisville, Cincinnati and Charleston Railroad Company be, and they are hereby, incorporated and made a body corporate and politic, under the name and style of the South Carolina Railroad Company.

II. The said South Carolina Railroad Company hereby incorporated, is hereby invested with all the rights and privileges which have been granted, or which now belong to the South Carolina Canal and Railroad Company, and to the Louisville, Cincinnati and Charleston Railroad Company, or to either of them, and shall be liable to pay all the debts and contracts which are obligatory upon either of the said Companies; and the liens and charges upon the stock and property of either of the said Companies shall stand as liens and charges upon the stock and property of the Company hereby incorporated, in the same relative order in which they now stand.

III. The Company hereby incorporated shall be governed by the same rules and in the same manner as is directed by the Louisville, Cincinnati and Charleston Railroad Company, except that the qualification for a Director shall be reduced to twenty shares; and the President and Directors of the last mentioned Company, who are now in office, shall act as President and Directors of the Company hereby incorporated, until the first day of December next, or until a new election shall be made by the stockholders.

IV. The Stockholders of the Company hereby incorporated, shall purchase up the shares of the South Carolina Canal and Railroad Company, which are outstanding in the hands of individuals; or, in case such purchase cannot be made at fair rates within twelve months, then the Stockholders of the said South Carolina Canal and Railroad Company are authorized, at any time, to make a fair division of the rights and assets of the said Company, and to pay or deliver to the Stockholders who hold shares in the same, their respective portions, and to surrender up the charter

of the Company; whereupon, all the rights and privileges, granted to the said South Carolina Canal and Railroad Company, are hereby declared to be vested in the South Carolina Railroad Company hereby incorporated.

V. That the exclusive right and privilege of building, erecting, and keeping up bridges across the Savannah River, to an extent commensurate with the limits of the City of Augusta, with power to collect toll equal to the sums now authorized by law over any bridge erected or to be erected, be and is hereby vested in the said South Carolina Railroad Company, for the term of fourteen years, from and after the passage of this Act. (Stat. at Large, vol. II, 234.)

On the 19th December, 1843, the Legislature of South Carolina passed the following Act, to wit :

An Act to change the name and style of the Louisville, Cincinnati and Charleston Railroad Company, and to provide for uniting therewith the South Carolina Canal and Railroad Company, and for other purposes therein mentioned.

Whereas, the stockholders of the Louisville, Cincinnati and Charleston Railroad Company have not accepted the provisions of an Act entitled "An Act to unite the South Carolina Canal and Railroad Company, and the Louisville, Cincinnati and Charleston Railroad Company into one corporation," passed on the twentieth day of December, in the year of our Lord one thousand eight hundred and forty-two. And whereas, also, the said Louisville, Cincinnati and Charleston Railroad Company have petitioned to have the name and style of the said Company changed to the South Carolina Railroad Company, and for other purposes set forth.

1. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, That the name and style of the Louisville, Cincinnati and Charleston Railroad Company be, and they are hereby, changed to the South Carolina Railroad Company, which shall hereafter be the name and style of the said Company.

II. That whenever the written consent of all the stockholders of the South Carolina Canal and Railroad Company shall have been obtained, the said South Carolina Canal and Railroad Company shall be merged in the said South Carolina Railroad Company, and thereupon and thereafter, all the rights, privileges and property belonging to the said South Carolina Canal and Railroad Company shall be vested in the said South Carolina Railroad Company, and the said South Carolina Railroad Company shall be liable for all the debts and contracts of the said South Carolina Canal and Railroad Company; and the stock and property of the said South Carolina Railroad Company shall be subject to the same liens and charges to which the stock and property of the said South Carolina Canal and Railroad Company may be liable, and in the same relative order in which the said liens and charges now stand.

III. The said South Carolina Railroad Company is hereby excepted, from the provisions of the forty-first section of an Act entitled "An Act to incorporate certain villages, societies and companies, and to renew and amend certain charters heretofore granted, and to establish the principles on which charters of incorporation will hereafter be granted," ratified on the seventeenth day of December, in the year of our Lord one thousand eight hundred and forty-one. But nothing herein contained shall be construed as exempting the said Company from the provisions of the said forty-first section, upon any future grant, renewal or modification of their charter.

On the 21st of December, 1865, the Legislature of South Carolina passed the following Act, to wit:

AN ACT TO LEND THE CREDIT OF THE STATE TO SECURE CERTAIN BONDS TO BE ISSUED BY THE SOUTH CAROLINA RAILROAD COMPANY, AND FOR OTHER PURPOSES.

SECTION I. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, and by author-

ity of the same, That for the extension of the debt guaranteed by the State of South Carolina, in pursuance of the provisions of the Act of the General Assembly, ratified on the twentieth day of December, eighteen hundred and thirty-seven, entitled "An Act to lend the credit of the State to secure any loan which may be made by the Louisville, Cincinnati and Charleston Railroad Company, and for other purposes," the South Carolina Railroad Company be, and is, hereby authorized to issue its bonds for the principal and interest of said debt, which said bonds shall be payable at London, or such other place as the South Carolina Railroad Company may prescribe, not more than twenty years after the date thereof, and bear interest at the rate of five per cent. per annum, payable semi-annually; and when said bonds shall be signed by the President of the said Company under its corporate seal, and be countersigned by the Secretary thereof, it shall be the duty of the Treasurer of the State to endorse thereon that the faith and funds of the State of South Carolina are pledged to the punctual payment of the principal and interest of said bonds, according to the tenor and effect thereof: *Provided*, that the Treasurer shall not endarse the bonds to be issued in pursuance of this Act for any amount greater than the principal and interest of the bonds which shall, from time to time, be delivered up and cancelled.

Sec. II. That the South Carolina Railroad Company shall, from and after the expiration of five years from the date of such bonds, annually apply such portions of its earnings to the payment of the principal and interest of such bonds as will insure the full and entire payment thereof, at or before the period at which the liability of the State on such bonds would mature.

Sec. III. *And whereas*, The bonds to be issued in pursuance of this Act are in substitution of the bonds guaranteed by the State under the Act ratified the twentieth day of December, eighteen hundred and thirty-seven, and an extension of the principal and interest due thereon: *Be it, therefore, further enacted*, That as soon as the Treasurer of the State shall have made any such endorsement on any such bonds, all the estate, property, and funds, mortgaged to the State by the Act ratified on the twentieth day of December, eighteen hundred and thirty-seven, shall continue mortgaged and pledged to the State, to secure the State against

any liability on said loan, and the endorsement to be made in pursuance of this Act for the payment thereof, in like manner and to the same extent as the said estate, property and funds are now mortgaged, and with all the rights of priority and lien given by said Act to the State.

In the Senate House, the twenty-first day of December, in the year of our Lord one thousand eight hundred and seventy-five.

W. D. PORTER,
President of the Senate.
C. H. SIMONTON,
Speaker of the House of Representatives.

Approved: JAMES L. ORR.

On the 19th of September, 1866, the Legislature of South Carolina passed the following Act, to wit:

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO LEND THE CREDIT OF THE STATE TO SECURE CERTAIN BONDS TO BE ISSUED BY THE SOUTH CAROLINA RAILROAD COMPANY."

Whereas the bonds of the Louisville, Cincinnati and Charleston Railroad Company, guaranteed by the State, in accordance with the Act of the General Assembly, ratified the twenty-first day of December, in the year of our Lord one thousand eight hundred and thirty-seven, are for the most part held by parties resident in Great Britain, and the exchange of said bonds for the bonds authorized to be substituted in lieu thereof, under the Act ratified December the twenty-first, in the year of our Lord one thousand eight hundred and sixty-five, cannot be made at the office of the Treasurer of the State, as provided for in said Act;

I. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That so much of the first section of the Act to which this is an amendment, as requires the outstanding bonds to be

delivered up to the Treasurer and cancelled before the guarantee of the State is endorsed upon the new bonds be, and the same is hereby, repealed.

II. That to effect the exchange of the new bonds for those now outstanding, the Governor of the State be, and is hereby, authorized to appoint an agent of the State, to whom the Treasurer, after endorsing upon the bonds to be issued in pursuance of the Act ratified December the twenty-first, in the year of our Lord one thousand eight hundred and sixty-five, the guarantee of the State, as provided in said Act, shall deliver said bonds, and by whom the exchange of the new bonds for the old shall be effected; the expenses and compensation of such agent to be defrayed by the South Carolina Railroad Company.

III. That said agent shall not deliver the bonds to be issued in pursuance of the Act ratified December the twenty-first, in the year of our Lord one thousand eight hundred and sixty-five, for any amount greater than the principal and interest of the bonds which shall, from time to time, be delivered up to him to be cancelled, and that when said agent shall have effected said exchange, he shall report to the Governor of the State the amount of bonds which he has delivered, and the amount which he has received in exchange, and shall deliver to the Treasurer of the State the bonds received by him in exchange.

In the Senate House, the nineteenth day of September, in the year of our Lord one thousand eight hundred and sixty-six.

W. D. PORTER,
President of the Senate.
C. H. SIMONTON,
Speaker House of Representatives.

Approved: JAMES L. ORR.

On the 14th, 15th and 16th days of April, 1868, the people of the State of South Carolina ratified a new State Constitution, which contains the following provisions, to wit:

"ARTICLE 9. SECTION 8. The corporate authorities of Counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes ; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. And the General Assembly shall require that all the property, except that heretofore exempted within the limits of municipal corporations, shall be taxed for the payment of debts contracted under authority of law."

"ARTICLE 12. SEC. 2. The property of corporations now existing, or hereafter created, shall be subject to taxation, except in cases otherwise provided for in this Constitution."

On the 1st of March, 1870, the following Act of the General Assembly of South Carolina, was approved, to wit :

"An Act to enforce a uniform system of assessment and taxation by municipal bodies."

Whereas, it is provided by Section 1, Article IX, of the Constitution, that the General Assembly shall provide by law for an uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, the proceeds of which alone shall be taxed, and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes ; and

Whereas, it is provided by Section 8 of the same Article, that the corporate authorities of Counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes ; such taxes to be uniform, in respect to persons and property, within the jurisdiction of the body imposing the same. And the General Assembly shall require that all the property, except that heretofore exempted within the limits of municipal corporations, shall be taxed for the payment of debts contracted under authority of law ; and

Whereas, it is further provided by Section 2, Article XII, of the Constitution, that the property of corporations now existing

or hereafter created, shall be subject to taxation, except in cases otherwise provided for in this Constitution ; therefore

Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by authority of the same :

SECTION 1. "That all municipal corporations, created under or by the laws of this State, and vested with the power to lay and collect taxes, are hereby authorized and required to assess, all property, real and personal, within their corporate limits, at its actual value, and lay all taxes thereon, at a uniform and equal rate : *Provided*, that all property, and no other, exempted from taxation by the third section of the Act, entitled, 'An Act to provide for the assessment of taxation of property, ratified, the 15th day of September, A. D. 1868, shall be exempted from taxation by municipal corporations.'"

In the Act entitled, "An Act to incorporate Charleston," passed August 13, 1783.

SEC. 4. (Stat. at Large, vol. 7, 98,) The City Council are vested with power to lay and collect taxes in the following words, to wit: "And the said City Council shall also be vested with full power and authority to make such assessments on the inhabitants of Charleston, or those who hold taxable property within the same, for the safety, convenience, benefit and advantage of the said city, as shall appear to them expedient."

On the 22d day of March, 1870, the City Council of Charleston passed "An ordinance to raise supplies for the fiscal year ending December 31, 1870," the first section of which is as follows :

"SEC. 1. The City Appraiser is hereby authorized to assess a tax of two cents upon the dollar of the value of all real and personal property in the City of Charleston for the purpose of meeting the expenses of the City Government for the current fiscal year."

R. f. 34.

Pursuant to this ordinance, the City Appraiser assessed a tax of seven thousand three hundred and eighty five dollars, ($7,385.00) upon the real property of the South Carolina Railroad Company, within the limits of the City of Charleston.

R. f. 35.

ASSIGNMENT OF ERRORS.

The Court below erred in granting a perpetual injunction against the City Council of Charleston, restraining them from collecting any tax upon the capital stock, dividends thereon, and the real and personal property, of the South Carolina Railroad Company.

ARGUMENT.

The Court below erred, because

1. The property of the South Carolina Railroad Company, lying within the limits of the City of Charleston, and taxed therein, for the year 1870, was acquired and is held by virtue of the powers and privileges, which the said Company obtained from the charter of the South Carolina Canal and Railroad Company, and not by virtue of the powers and privileges which said company obtained from the charter of the Cincinnati and Charleston Railroad Company, or the Lovisville, Cincinnati and Charleston Railroad Company.

2. The property in the City of Charleston, acquired by the South Carolina Railroad Company, by virtue of the powers and privileges obtained under the charter of the South Carolina Canal and Railroad Company, was exempt from taxation for thirty-six years only, which period expired in 1869.

3. The exemption from taxation claimed by the South Caro-

lina Railroad Company, by virtue of the 43d section of the charter of the Cincinnati and Charleston Railroad Company, was repealed by the provisions of the State Constitution of 1868, and also by the Act of March 1st, 1870.

We shall discuss these questions in their order.

I. The South Carolina *Canal* and Railroad Company obtained the right to construct and keep up a railroad from Charleston to Hamburg and the Savannah river, and to obtain and hold property necessary for such purpose, from the provisions of their charter granted in 1827, and the amendments thereto. They obtained their privilege of owning property, and constructing their road *within* the limits of the city of Charleston, under the provisions of sections two and three of the Act of December 20, 1832.

Pursuant to the powers and privileges contained in their charter the said South Carolina Canal and Railroad Company constructed the railroad *in* and from the city of Charleston to Hamburg, and in consideration thereof, obtained from the State, by Act of December 19, 1833, a valuable grant of lands. The Act reads: "Whereas, for the public benefit, the South Carolina Canal and Railroad Company have constructed, under their charter, a railroad from Charleston to Hamburg, and may construct branches thereof. *Be it enacted, &c.*, That all lands, not heretofore granted to any person, or appropriated by law to the use of the State, within one mile of the centre of the main track of the said road, and the branches thereof that may be constructed, be, and they are hereby, vested in the rail company and their successors forever."

See South Carolina Railroad Company vs. Columbia and Augusta Railroad Company, 13th Rich. Eq. R. 340.

The CINCINNATI AND CHARLESTON RAILROAD COMPANY was chartered in 1835. Its name was changed to the LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY, in 1836, and important powers of banking were granted to its stockholders. In 1837 and 1838, it received another important grant from the State, by way of a loan of its credit to the extent of two millions of dollars. (Act December 20, 1837, and Act December 19, 1838.)

In 1837, this company broached the scheme of connecting itself with the South Carolina Canal and Railroad Company, or

rather, of uniting the two roads. The motive for this connexion appears from the report of a committee of stockholders of the Louisville, Cincinnati and Charleston Railroad Company, appointed for the purpose of considering the subject, which was adopted, as follows : "By the charter of the South Carolina Canal and Railroad Company, they *have the exclusive privilege of connecting Charleston and Columbia by means of a railroad.* The most obvious consideration for this company is that, unless such connection be formed, they may be prevented from carrying their road either through Columbia, or so near it as may be virtually an infringement on the charter of the South Carolina Canal and Railroad Company, *the route which appears to be the most practicable and advantageous.*"

R. f. 60.

The scheme was entered upon, and it was proposed to be carried out by purchasing the stock of the South Carolina Canal and Railroad Company, and it appears by the records of that company, (R. f. 58,) that in July, 1838, the sale of its stock to the Louisville, Cincinnati and Charleston Railroad Company, with the exception of 783 shares, had been effected.

R. f. 58.

It thus appears that the Louisville, Cincinnati and Charleston Railroad Company, became possessed of a controlling influence in the South Carolina Canal and Railroad Company. There is no evidence, and it is not alleged in the Appellees' Bill of Complaint, that the Louisville, Cincinnati and Charleston Railroad Company, while existing under that name, (which it did till December 19, 1843,) built any portion of the road contemplated in their charter, or that its successor, the South Carolina Railroad Company, since 1843, has constructed or controls any other railroad, *within the limits* of the City of Charleston, than that constructed by the South Carolina Canal and Railroad Company.

In 1842, December 20. "An Act to unite the South Carolina Canal and Railroad Company, and the Louisville, Cincinnati and Charleston Railroad Company," was passed. The first section changes the name of the Louisville, Cincinnati and Charleston Railroad Company to the South Carolina Railroad Company, and

the second section vests the said South Carolina Railroad Company with all the rights and privileges then belonging to the South Carolina Canal and Railroad Company, and also those of the Louisville, Cincinnati and Charleston Railroad Company, or either of them, and makes it liable for the debts of each of said Companies. The fourth section provides that the stockholders of this new Company (South Carolina Railroad Company) shall purchase up the shares of the South Carolina Canal and Railroad Company, then outstanding in the hands of individuals, &c., whereupon the rights and privileges of the South Carolina Canal and Railroad Company are declared to be vested in the South Carolina Railroad Company.

This Act was not accepted by the stockholders of the Louisville, Cincinnati and Charleston Railroad Company; but in 1843, they asked the Legislature for substantially the same thing, with the additional privilege that they be excepted out of the provisions of the 41st Section of the Act of December 17, 1841, which made their charter subject to amendment or repeal, unless so excepted.

R. f. 65, 66.

Accordingly, the Legislature, on the 19th December, 1843, passed an Act entitled "An Act to change the name and style of the LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY, and to provide for *uniting* therewith the SOUTH CAROLINA CANAL AND RAILROAD COMPANY, and for other purposes therein mentioned."

The preamble to this Act recites that, whereas the stockholders of the CINCINNATI AND CHARLESTON RAILROAD COMPANY have not accepted the provisions of the Act of the 19th (20th) December, 1842, (above recited); and, whereas, this Company have petitioned to have their name changed to the SOUTH CAROLINA RAILROAD COMPANY.

Be it enacted, &c. SEC. 1. That the name and style of the LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY be changed to the SOUTH CAROLINA RAILROAD COMPANY.

SEC. 2 provides that whenever the written consent of all the stockholders of the SOUTH CAROLINA CANAL AND RAILROAD COMPANY shall have been obtained, the said Company shall be merged in the said South Carolina Railroad Company, and *thereupon* and *thereafter* all the rights, privileges and property of the said SOUTH

CAROLINA CANAL AND RAILROAD COMPANY shall be vested in the said SOUTH CAROLINA RAILROAD COMPANY, and said South Carolina Railroad Company shall be liable for all the debts and contracts of said South Carolina Canal and Railroad Company; and the stock and property of the said SOUTH CAROLINA RAILROAD COMPANY shall be subject to the *same liens and charges* to which the stock and property of the said SOUTH CAROLINA CANAL AND RAILROAD COMPANY may be liable, &c.

SEC. 3. Provides, that the said South Carolina Railroad Company is hereby excepted from the provisions of the 41st Section of the Act of December 17th, 1841, but says nothing herein contained shall be construed as exempting the said company from the provisions of the said forty-first Section, upon any future *grant, renewal* or *modification* of their charter.

It is, therefore, apparent, that the South Carolina Canal and Railroad Company, continued its separate existence in law and in fact till the passage of the Act of December 19, 1843, and whatever right the South Carolina Railroad Company then obtained, and now possesses, to acquire and hold property within the limits of the City of Charleston, it acquired by its succession to the rights and privileges granted by the State of South Carolina to the South Carolina Canal and Railroad Company 1832.

II. By the 14th Section of the Act of 1828, amending the original Charter of the South Carolina Canal and Railroad Company, provision was made for the exemption from taxation of the property and estates of the said Company for the first period of thirty-six years after the completion of the railroad from Charleston to Hamburg. As before stated, this road was finished sometime during the year 1833. This exemption from taxation therefore, expired in 1869. At the moment this period of thirty-six years determined, the property of the said Company, now held by the South Carolina Railroad Company, became subject to taxation, unless the perpetual exemption from taxation declared in the 43d Section of the Act of Incorporation of the Cincinnati and Charleston Railroad Company, of 1835 applies to it.

It is insisted that this 43d Section of the Act of 1835, does not apply to the railroad in and from the City of Charleston to

Hamburg, or the real estate connected therewith in the City of Charleston and along the route.

This road was built, and the property connected with it was and has been acquired, as has been shown, under the provisions of the charter of the South Carolina *Canal* and Railroad Company, of 1827–8, and 1832, and the question, therefore, is:

Is the property of the South Carolina Railroad Company, acquired and held by them by virtue or in consequence of the union of the South Carolina Canal and Railroad Company with the Louisville, Cincinnati and Charleston Railroad Company, exempted from taxation, under the provisions of the 43d Section of the charter of the Cincinnati and Charleston Railroad Company?

The preamble of the Act incorporating the Cincinnati and Charleston Railroad Company, declares that the said Company is incorporated for the purpose of establishing a communication, by railroad, between the cities of Cincinnati, in the State of Ohio, and Charleston, in the State of South Carolina, through the States of Kentucky, Tennessee, North Carolina and South Carolina. By an Act, amendatory of this Act, the Company is discharged from all obligation to construct any branches of the railroad in the State of Kentucky, or extend the main road in the said State further than from the Southern line thereof to Lexington, in that State.

The 32d Section of the charter of the said Company gives them power to "purchase, have and hold in fee or for a term of years, any lands, tenements or hereditaments, which may be necessary for the said road, or any branch or appurtenance thereof, or for the erection of depositories, storehouses, houses for officers, servants or agents of the Company, or for workshops or founderies, to be used for the said Company, or for procuring timber, stone or other materials necessary to the construction of the road, its branches or appurtenances, or for effecting transportation thereon, *and for no other purpose whatever.*"

The 17th Section of the said charter provides that the corporation "shall have power and may proceed to construct, as speedily as their means will permit, a railroad with one or more tracks, to be used with steam, animal or any other power, which shall pass through the States of Kentucky, Tennessee, North Carolina and

South Carolina, so as to form a continuous line of railroad between the cities of Cincinnati and Charleston."

It is clear, from these sections, that the property, which the Company was permitted to purchase, was for the purpose of constructing a railroad, with one or more tracks, which should form a continuous line of railroad between Cincinnati and Charleston, and for the erection of depositories, storehouses, etc., necessary to the construction of the said road *to be built*, and for no other purpose whatever. Such property and estates so acquired, *and no other*, are the property and estates which are exempted from taxation by the 43d Section of the said charter.

The railroad from Charleston to Hamburg had been built, and was in operation two years before the Act incorporating the Cincinnati and Charleston Railroad Company was passed, the South Carolina Canal and Railroad Company in possession thereof, having the exclusive right to make, keep up and use the same for thirty-six years, and also build a road to Columbia, S. C. (Secs. 1 and 14, Act Jan. 30, 1828.)

The charter of this Company, therefore, would not permit the Cincinnati and Charleston Railroad Company to build a railroad between Charleston and Columbia, or Hamburg, or any point on the line of the said road in furtherance of the object of their incorporation, and they could hence only build a road which might strike the road of the South Carolina Canal and Railroad Company at such point as might be agreed upon between the two Companies; otherwise the Act of the Legislature of 1828, giving exclusive privileges to the South Carolina Canal and Railroad Company to make and keep up the railroad between Charleston and Hamburg, with the branches to Columbia and Camden, and forbidding, for the period of thirty-six years, the incorporation of any Company for the purpose of connecting, by railroads or canals, the City of Charleston with said places, would have been violated, its provisions repealed, and thus by impairing the obligation of the contract between the State and the South Carolina Canal and Railroad Company, would have been unconstitutional. This difficulty was felt and acknowledged by the Louisville, Cincinnati and Charleston Railroad Company in 1837.

The 43d Section of the charter of the Cincinnati and Charleston Railroad Company, before the union of that Company with the South Carolina Canal and Railroad Company, applied only to property acquired for the purposes specified in said charter, and has remained since the union applicable to such property and to no other.

In the case of the Philadelphia, Wilmington and Baltimore Railroad Company *vs.* Maryland, 10 How. 376, the Court says: The Philadelphia, Wilmington and Baltimore Railroad Company is a corporation composed of several railroad companies, which had been previously chartered by the States of Maryland, Delaware, and Pennsylvania, and which, by the corresponding laws of their respective States, were united together to form one corporation. One of the companies, which forms part of this corporation, was originally the Baltimore and Port Deposit Railroad Company, and was chartered by Maryland by an Act passed in 1831. The Baltimore and Delaware Railroad Company was another of the original corporations, also chartered by Maryland in 1831. This Company was afterwards, by an Act of 1835, and a corresponding law passed by the State of Delaware, united with the Wilmington and Susquehanna Railroad Company, which had been previously chartered by Delaware, the two Companies, when united, taking the corporate name of the latter. Afterwards, by an Act of the Assembly of Maryland, and corresponding laws passed by Delaware and Pennsylvania, the last named Company, together with the Baltimore and Port Deposit Railroad Company, was authorized to unite with the Philadelphia, Wilmington and Baltimore Railroad Company.

In 1841, after the union of these Companies, the portion of the road which belonged to the Baltimore and Port Deposit Railroad Company before the union, was assessed as a part of the taxable property of the State. The charter of the said road made no provision for exempting its stocks or its property, real or personal, from taxation. The law which authorized the Wilmington and Susquehanna Railroad Company and the Baltimore and Port Deposit Railroad Company to unite themselves with the Philadelphia, Wilmington and Baltimore Railroad Company, declared that the last named company should be entitled to all the powers, and privileges, and advantages at that time belong-

ing to these two companies. "Now, as these two companies hold their corporate privileges under different charters, the evident meaning of this provision is, that whatever privileges and advantages either of them possessed shall in like manner be held and possessed by the new Company to the extent of the road they had respectively occupied before the union. That it should stand in their place and possess the power, rights, and privileges they had severally enjoyed in the portions of the road which had previously belonged to them. * * * The plaintiff, in error, therefore, took the property of the Baltimore and Port Deposit Railroad Company with all the liabilities to which it was subject in the hands of that company. * * * As that Company held it, so it is now held by the plaintiff in error, with the same privileges, powers and liabilities; and as the property assessed was liable to taxation in the hands of the original corporation, it is equally liable in the hands of the Company with which it is now consolidated."

Applying the principles here laid down to the property of the South Carolina Railroad Company held under the respective charters of the South Carolina Canal and Railroad Company and the Cincinnati and Charleston Railroad Company, it is evident, that since the property held under the charter of the South Carolina Canal and Railroad Company would have become liable to taxation in the year 1869, if that company had continued its separate existence, by the determination of the period of thirty-six years' exemption, the said property must be equally liable in the hands of the South Carolina Railroad Company.

The Act of the 19th of December, 1843, "To change the name and style of the Louisville, Cincinnati and Charleston Railroad Company, and to provide for *uniting* therewith the South Carolina Canal and Railroad Company," &c., did precisely what this title indicates, viz: *united* the two companies under the name of the South Carolina Railroad Company, and in the 3d section, after the amalgamation is effected, it is expressly provided that "all the rights, privileges and property belonging to the said South Carolina *Canal* and Railroad Company, shall be vested in the said South Carolina Railroad Company * * and the stock and property of the said South Carolina Railroad Company, shall be subject to the same *liens* and *charges* to which the stock and

property of the said South Carolina *Canal* and Railroad Company may be liable."

It should be noticed that all the provisions of the charter of the South Carolina Canal and Railroad Company, are expressly preserved to the South Carolina Railroad Company, so far as they confer "rights, privileges and property," and also impose "liens and charges," and this, in a comprehensive way, preserves the whole Act of Incorporation of the South Carolina Canal and Railroad Company, except the name and independent existence of that company.

Chief Justice Shaw, in the case of the Boston and Lowell Railroad Company, vs. the Salem and Lowell Railroad Company, 2 Gray, 28, says: "In construing this Act of Incorporation, we are to bear in mind the time and circumstances under which it was made, but more especially to take into consideration every part and clause of the Act, and deduce from it the true meaning and intent of the parties. The Act, like every other Act and charter of the same kind, is a contract between the government on the one part, and the undertakers accepting the Act of Incorporation on the other part; and, therefore, what they both intended by the terms used, if we can ascertain it, forms the true construction of such a contract." Blakemore vs. Glamorganshire Canal Nav. Co. 1 Myl. and Keen 154.

Certainly there is no more ground for saying that the portion of this Act that imposes "liens and charges" is repealed than there is for saying that the portion which confers "rights, privileges and property" is repealed.

Under the head of "privileges," acquired by the South Carolina Railroad Company, with the property of the South Carolina *Canal* and Railroad Company, by this Act of 1843, was the exemption of said property from taxation till 1869, and under the head of "liens and charges," assumed by said company, was taxation after that date.

It may be further said that since it was not the intent of the Legislature of 1835, which granted the charter to the Cincinnati and Charleston Railroad Company, that the provisions of the 43d section of said charter should be extended over the property which might be subsequently acquired by said company them for other and different purposes than were provided for in

the charter itself, it is fair to presume that by the Act of the Legislature of 1843, changing the name of the company to the South Carolina Railroad Company, it was intended to give them no enlarged powers and privileges, except in so far as the same were derived from the charter of the South Carolina Canal and Railroad Company, over the road built and kept up by that company. By the Act of 1843, it is manifestly intended that the franchises and property of the South Carolina *Canal* and Railroad Company, shall remain unchanged, at least it is not clearly expressed that they shall be enlarged by the provisions of the charter of the Cincinnati and Charleston Railroad Company.

Jefferson Branch Bank vs. Skelly, 1 Black, 446.

If there be any uncertainty as to the privileges conferred or extended by this Act of 1843, the right of taxation being involved, it must be construed strictly against the corporation and in favor of the public.

Jefferson Branch Bank vs. Skelly, 1 Black, 446.

Providence Bank vs. Billings, 4 Pet., 561-2.

III. The exemption from taxation, claimed by the South Carolina Railroad Company, by virtue of the 43d section of the charter of the Cincinnati and Charleston Railroad Company, (Act of 1835,) if found to have been extended over all the property of that company acquired by virtue of the Act of Consolidation of 1843, the same was repealed by the constitution and laws of 1868, also by the Act of March 1, 1870.

The third section of the Act of 1843, provides that "the South Carolina Railroad Company is hereby excepted from the provisions of the *forty-first section* of an Act entitled "An Act to Incorporate certain Villages, Societies and Companies, and to renew and amend certain charters heretofore granted, and to establish the principles on which Charters of Incorporation will hereafter be granted, ratified on the 17th day of December, 1841, but nothing herein contained shall be considered as exempting the said company from the provisions of the said forty-first section upon any future *grant, renewal* or *modification* of their charter." That this section was clearly recognized as of binding force, and as creating a contract between the State and the company, is clearly manifest from all the Acts giving them new powers and privi-

leges, down to the year 1858, as every such Act expressly provides that the said company shall be excepted from the provisions of the said forty-first section until a new grant, renewal, or modification of their charter shall be had, whereupon their Charter of Incorporation shall become subject to the provisions of the said forty-first section. (Stat. at Large, vol. 11, pp. 299, 321, §28; and vol. 12, pp. 177, 298, 706, 730 §8. By section 8 of the Statute last mentioned, it is provided that the acceptance of this renewal of charter, or of any Act passed at this session of the General Assembly, etc., shall not subject the South Carolina Railroad Company to the operation of the forty-first section of the Act of 1841; thus supplying the omission of the exception in the Act on page 706, vol. 12.)

In 1865, the General Assembly, by an Act providing for loaning the credit of the State to secure certain bonds to be issued by the South Carolina Railroad Company, and for other purposes, (before cited,) and in 1866, by an Act amendatory of the last mentioned Act, (before cited,) modified the charter of, and made an important *grant* to, said Company, and neither of these two Acts except the charter of said Company from the provisions of the 41st Section of the Act of 1841. The South Carolina Railroad Company have accepted the provisions of the Acts of 1865–'66, and thus by virtue of the 41st Section of the Act of 1841, and also by virtue of the 3d Section of the Act of 1843, their charter has become subject to amendment, alteration or repeal by the Legislature. The stockholders in the South Carolina Railroad Company were under no obligation to accept the provisions of these two Acts; but, having accepted them, they must abide the consequences of such acceptance. By failing to provide in either of these Acts, that the charter of the Company should not be subject to the provisions of the 41st Section of the Act of 1841, said section became at once, without any further Act on the part of the Legislature, a part of their charter.

Crease *vs.* Babcock, 23 Pick., 341.

In the matter of Oliver Lee & Co.'s Bank, 21st N. Y., 9; affirmed by the Supreme Court of the United States in Sherman *vs.* Smith, 1 Black., 587.

Schenectady and Saratoga Plank Road Company *vs.* Thatcher, 11th N. Y., 102.

In the matter of the Reciprocity Bank, 22d N. Y., 9.

The Buffalo and N. Y. City Railway Company *vs.* Dudley, 14th N. Y., 354.

Commissioners on Inland Fisheries *vs.* Holyoke Water Power Company, 104 Mass., 446.

The charter of the South Carolina Railroad Company having thus become subject to amendment and alteration, we claim that its 43d Section, exempting its property from taxation, has been repealed by the Constitution of the State, and the Acts passed in conformity thereto :

1st. By the 8th Section of Article 9, and Section 2 of Article 12 of the Constitution of South Carolina, ratified April 14th, 15th and 16th, 1868, (before cited.)

2d. By the Act of the General Assembly, to provide for the assessment and taxation of property, ratified on the 15th day of September, 1868, (see Stat. at Large, vol. 14, p. 27,) which directs that all real and personal property in the State shall be subject to taxation. The said Act in its 3d Section, exempts from taxation such property as is required to be exempted by the Constitution, but among such property is not included the real or personal property of railroad corporations. The said Act further provides a method by which railroad corporations shall be assessed and taxed.

3d. By the Act of March 1, 1870, above recited. These Acts have in unequivocal terms, and in conformity to the requirements of the State Constitution, repealed so much of the charter of the said South Carolina Railroad Company, as forever exempted all its property from taxation, and expressly authorized and required that its property should be subject to taxation.

Redfield on Railways, vol. 2, p. 611, 4 ed.

Even if it could be held that these Acts did not repeal the 43d Section of the charter of the Cincinnati and Charleston Railroad Company, the sections hereinbefore recited from the State Constitution had previously repealed it, and such repeal by the State Constitution is of quite as much force as if expressly enacted by the Legislature itself.

See Lee & Co.'s Bank, 21 N. Y., 19.

Woolsey *vs.* Dodge, 6 McLean, 145.

Sherman *vs.* Smith, 1 Black., 587.
State *vs.* Addison, 2d S. C., *new series*, 509.

This repeal of the exemption from taxation granted the Cincinnati and Charleston Railroad Company is not in violation of the Constitution of the United States. The Act of 1843, changing the name of the Louisville, Cincinnati and Charleston Railroad Company to the South Carolina Railroad Company, expressly provided that the charter of the Company should be subject to alteration, amendment or repeal whenever the conditions named ceased to be observed. This condition was well understood by the Company and the stockholders thereof, and the exercise by the Legislature of the power reserved to it by said Act in no way violated the provisions of the contract entered into between the State and the Company, or impaired its obligation, or devested vested rights of the stockholders therein.

Angell & Ames on Corporations, p. 769.

Mass. Gen'l Hospital *vs.* State Mutual Life Assurance Co., 4 Gray, 234.

Ohio Life Insurance and Trust Co. *vs.* Debolt, 16 H. 427.

The Act of 1843 was accepted by the Company, and it is now bound by all it contains.

Bushwick and Newton Bridge Co. *vs.* Ebbetts, 3 Edm. 353.

Belcher *vs.* Commissioners of Orphan House, 2 Mc., 25.

"It is a just principle of common law and of sound reason that the parties whose interests are attempted to be affected by the acts of others, which acts they have a right to oppose, may become bound by such acts, if they consent thereto, and especially if anything is offered as a consideration, however inadequate, they accepting it as such, and having a fair view of the terms upon which it is offered. No man can be compelled by the Legislature to become a member of a corporation without his consent; yet, if he do consent, and even, not expressly, but by implication, he cannot afterwards deny his liability to the lawful exactions of the corporation, on the ground that he did not solicit the privilege, and was no party to it when granted." Hampshire *vs.* Franklin, 16 Mass., 397. The stockholders in the Louisville, Cincinnati and Charleston Railroad

Company, who consented either expressly or by implication, to the provisions of the Act of 1843, did so for what they deemed a sufficient consideration ; and they cannot now claim that the vested right of exemption from taxation, granted by the charter of the corporation, and which might have formed the inducement to their becoming members thereof, has been taken from the corporation without their consent. By consenting to the change of name, and to the other provisions of the Act of 1843, they consented that the 43d Section, as well as any other section of their charter might be amended, modified, or wholly repealed by the Legislature, upon the happening of the contingency, which did happen at the time of the passage of the Act of 1865 and of the Act of 1866, before mentioned. Angell & Ames on Corporations, §85. "If a corporation whose charter contains no reservation of power by the Legislature to amend it, accept a subsequent statute which grants new privileges, and reserves to the Legislature power to amend the charter, they are bound by the reservation, and the charter may thereafter be altered without their consent."

Monongahela Nav. Co. *vs.* Coen, 6 Pa. St., 379.

With still greater force can this be said of persons who have taken stock in the Company since the Act of 1843. All such persons became stockholders with a full knowledge of the liability of the Company to the legislative authority of amendment, alteration, or repeal under the 41st Section of the Act of 1841, whenever the conditions of the 3d Section of the Act of 1843 should not be complied with.

Bailey *vs.* Hollister, 26 N. Y., 112.

"In cases where the exemption from taxation is created in the charter of corporations, subject to future amendments or repeal by the Legislature, the Legislature may repeal or modify the exemption from taxation."

Commonwealth *vs.* Fayette County Railway, 55 Penn. St., 452.

"The provision in a charter reserving to the Legislature the right to alter or repeal, is not void as repugnant to the grant. It is not a repugnant condition, but only a limitation."

McLaren *vs.* Pennington, 1 Pai., 103.

City of Roxbury *vs.* Boston and Providence Railroad, 6 Cush., 432.

In determining this question, we ask the Court to look at all the circumstances under which the various charters of incorporation under which the South Carolina Company now holds its property were granted, to consider the conditions on which they were granted, and the ends to be attained by such grants. It will be seen that the Cincinnati and Charleston Railroad was considered, at its inception, as a great work of public improvement, and as constituting a medium of commercial and social intercourse between neighboring States. The corporation was invested with extraordinary privileges and rights; with unlimited power to borrow money and increase their capital stock; with their bonds to the amount of $2,000,000, secured by the good faith and credit of the State; with grants of public lands, and the right to acquire the lands of individuals for the purpose of the road; with an exemption of the property and estates belonging to them from all taxation, and during thirty years they have not accomplished the objects of their incorporation.

This corporation has abandoned the object for which it was incorporated, (R. F. 63,) and now, after it has bought the completed road of the South Carolina Canal and Railroad Company, it asks this Court to extend the exemption from taxation, which it claims is perpetual under the provisions of the 43d Section of the charter of the Cincinnati and Charleston Railroad Company, over that road—a road built and completed two years before its own incorporation, and ten years before its name was changed to the South Carolina Railroad Company. Was it the intention of the Legislature that the powers granted the Cincinnati and Charleston Railroad Company should be allowed to remain unexecuted, that no public good or convenience should be accomplished for a period of thirty years, and yet that the privileges acquired for one purpose should be extended over other property of the Company, subsequently acquired for an entirely different purpose? Must the contract between the State and the Company be considered as altogether in favor of the Company and against the State, notwithstanding the non-use by the Company of the powers granted in their charter and their failure to render the State the public benefit which formed the consideration thereof?

In view of the non-use of their powers, and their failure to confer the public benefit they had undertaken, has not the 43d Sec-

tion of their charter more of the features of a gratuity than a contract? and being a gratuity, may not the State, by Act of the Legislature, resume the right so long parted with? In the case of the Rector, etc., of Christ Church, Philadelphia *vs.* the County of Philadelphia, 24 How., 301, the Court says: "In the year 1833, the Legislature of Pennsylvania passed an Act, which recited that Christ Church Hospital had for many years afforded an asylum to numerous poor and distressed widows, who would probably else have become a a public charge; and it being represented that, in consequence of the decay of the buildings of the hospital estate, and the increasing burden of taxes, its means were curtailed, etc., they enacted that the real property, including ground rents, belonging and payable to said hospital, should remain free from taxes. In 1851, the same authority enacted that 'all property, real and personal, belonging to any association or incorporated company, which is now by law exempt from taxation, etc., shall hereafter be subject to taxation in the same manner, and for the same purposes as other property, and so much of any law as is hereby repealed and supplied, is repealed.'" "The plantiffs claim that the exemption conceded by the Act of 1833 is perpetual, and that the Act itself is in effect a contract. This concession of the Legislature was spontaneous, and no service or duty, or other remunerative condition, was imposed on the corporation. It belongs to the class of laws denominated *privilegia favorabilia.* It attached only to such real property as belonged to the corporation, and while it remained as its property; but it is not a necessary implication from these facts that the concession is perpetual, or was designed to continue during the corporate existence.

"Such an interpretation is not to be favored, as the power of taxation is necessary to the existence of the State, and must be exerted according to the varying conditions of the Commonwealth. The Act of 1833 belongs to a class of statutes in which the narrowest meaning is to be taken which will fairly carry out the intent of the Legislature. All laws, all political institutions are dispositions for the future, and their professed object is to afford a steady and permanent security to the interests of society. Bentham says that 'all laws may be said to be framed with a view to perpetuity; but perpetual is not synonymous to irre-

vocable ; and the principle on which all laws ought to be, and the grater part of them have been established, is that of defeasible perpetuity—a perpetuity—a perpetuity defeasible by an alteration of the circumstances and reason on which the law is founded.' The inducements that moved the Legislature to concede the favor contained in the Act of 1833, are special, and were, probably, temporary in their operation. The usefulness of the corporation had been curtailed in consequence of the decay of their buildings and the burden of taxes. * * *

"It is in the nature of such a privilege as the Act of 1833 confers, that it exists *bene placitum*, and may be revoked at the pleasure of the sovereign."

In the present case, has there not been an alteration of circumstances and reasons on which the law of 1835 was founded ? Were not the inducements that moved the Legislature to concede the favor contained in the Act incorporating the Cincinnati and Charleston Railroad Company special, and were they not intended to be of force only in case the Company so favored should return the promised benefit ? Is it not in the nature of such a privilege as the Act of 1835 confers, considering all the circumstances of the case, that it exists *bene placitum*, and may be revoked at the pleasure of the State ? Was not the concession of the Legislature in this case, as well as in the case cited, spontaneous, and although a service and duty was in this case imposed on the corporation, yet the corporation having failed to perform the service and duty, can it claim, now that the concession has been revoked, that such revocation violates the contract which the Company has not, for twenty-five years at least, performed or considered obligatory upon them ? The provisions of the charter of the Cincinnati and Charleston Railroad Company were, and are, mutually obligatory upon the State and Company.

See Vermont and Canada Railroad Company *vs.* Vermont Central Railroad Company, 34 Vt., 50.

That there has been a *non-user* for many years of the powers granted to the Cincinnati and Charleston Railroad Company, appears from the decree of Chancellor Carroll, before referred to, Whether such *non-user* is sufficient to work a forfeiture of *all* the chartered rights of the said company now possessed by the

South Carolina Railroad Company, is not before the Court for adjudication; but whether such *non-user* would not justify the declaration of the Legislature, as against this corporation, when it declared, that the property of all corporations within the State, or that thereafter might be incorporated, should be taxed, is submitted for consideration.

In Angell & Ames on Corporations, §111, it is said that "a charter of incorporation so far requires by implication that the body corporate shall perform the business for which it was instituted; that a substantial suspension of the same is a violation of its charter.

CASES CITED.

It is admitted that the uniform current of decisions in this country has been to the effect that the charters of incorporations are contracts between the State and the corporations, and being contracts, the Legislature cannot pass any laws impairing their obligations. We do not now seek to disturb these decisions, yet these decisions have not been pronounced without decided expressions of dissent on the part of members of the Court. In the case of Binghampton Bridge, 3 Wal. 82, Mr. Justice Grier, in delivering the dissenting opinion of the Chief Justice, Justice Field and himself, (three out of the eight Judges composed the Court who sat on the case) said: "The powers of one legislature to bind themselves and their posterity and all future legislatures from authorizing a bridge, absolutely required for public use, might well be denied by the courts of New York, and as a construction of their Constitution, we would have no right to sit in error upon their judgment. But assuming the power for one Legislature to restrain the power of future Legislatures, those who assert that it has been exercised, should prove their assertion beyond a doubt. Such intention must be clearly expressed in the letter of the statute, and not left to be be discovered by astute construction and inference."

In the case of the Washington University vs. Rouse, 8 Wal. 439, Mr. Justice Miller, in delivering the dissenting opinion of the

Chief Justice, Justice Field and himself says: "We do not believe that any legislative body, sitting under a State Constitution of the usual character, has a right to sell, to give, or to bargain away forever the taxing power of the State. This is a power which in modern political societies is absolutely necessary to the continued existence of every society."

* * * * * * * *

"To hold, then, that any one of the annual Legislatures can, by contract, deprive the State, forever, of the power of taxation, is to hold that they can destroy the government which they are appointed to serve, and that their action in that regard is strictly lawful."

* * * * * * * *

We are strengthened in this view of the subject by the fact that a series of dissents from this doctrine by some of our predecessors, shows that it has never received the full assent of this Court, and referring to those dissents for more elaborate defence of our views, we content ourselves with thus renewing the protest against the doctrine which we think must finally be abandoned." Judge Redfield, in 1855, in delivering the opinion of the Court in the case of Thorpe vs. The Rutland and Burlington Railroad Company, 27 Vt., 136, says: "It seems to me there is some ground to question the right of the Legislature to extinguish, by one Act, this essential right of sovereignty." Frost, J., in delivering the opinion of the Court in State vs. City Council of Charleston, 5 Rich. 577, says: "Great inequality of taxation must exist under the wisest system of impost. It is highly impolitic to increase the inequality by the grant of exemption to particular species of property. Every presumption should be made against such a grant." Mr. Justice Daniel, in his opinion in the case of the Ohio Life Insurance and Trust Company vs. Debolt, 16 H., 443, said: "I never can believe in that, to my mind, suicidal, doctrine which confers upon one Legislature, the creatures and limited agents of the sovereign people, the power, by a breach of duty and by transcending the commission with which they are clothed, to bind forever and irrevocably their creator, for whose benefit and by whose authority alone they are delegated to act, to consequences however mischievous or destructive."

D. T. Corbin

Sol Johnson

J. Phillips

Of Counsel

Supreme Court of the United States.

No

THE CITY COUNCIL OF CHARLESTON

ET. AL. APPELLANTS,

vs.

BRANCH, SONS & CO.,

APPELLEES.

Argument on behalf of Appellants.

D. T. CORBIN,

Solicitor for Appellants.

Courier Print, 1 1 East Bay, Charleston, S. C.

In the Supreme Court of the United States,

DECEMBER TERM, 1872.

REUBEN TOMLINSON, *et al.*, Appellants,

vs.

THOMAS BRANCH, *et al*, Appellees.

REUBEN TOMLINSON, *et al.*, Appellants.

vs.

MORRIS K. JESSUP, Appellee.

R. J. HUMPHREY, *et al.*, Appellants,

vs.

THOMAS E. B. PEGUES, Appellee.

Appeals from Circuit Court of the United States,

For District of South Carolina.

BRIEF FOR THE APPELLANTS.

In the Supreme Court of the United States,

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vs.

THOMAS E. B. PEGUES, Appellee.

Appeals from Circuit Court of the United States'

For District of South Carolina.

BRIEF FOR THE APPELLANTS.

These appeals involve the question of the right of the State of South Carolina to levy and collect taxes upon the property of the South Carolina Railroad Company, the Northeastern Railroad Company, and the Cheraw and Darlington Railroad Company, lying within that State.

The appellants are the officers of the State and of the several Counties thereof, in which the property of these several companies lies, who are charged by the laws of the State with the assessment and taxation of property.

The appellees are non-resident stockholders in the said companies.

The record in these cases show that, in each case, a bill of complaint was filed in the Circuit Court for the Fourth Circuit, setting forth that the State of South Carolina, by the appellants, had assessed and were about to collect certain taxes upon the property of the several above named companies; that these taxes were illegal, and in violation of the charters of the several companies; that no other adequate remedy existed for the protection of the complainants; and praying a writ of injunction to restrain the collection of the taxes in question.

A writ of injunction was thereupon issued in each case

The appellants, in due time, filed their answers, setting forth the right of the State of South Carolina to impose the taxes, and, after argument, the Circuit Court ordered that the injunctions be made perpetual.

The issue presented by the pleadings is, Is the imposition

of taxes by the State of South Carolina upon the property of the above-named railroad companies illegal, as being a violation of the contract of said companies with the State embodied in their respective charters as originally granted and subsequently modified?

The appellants allege, as error of law in the decree of the Circuit Court, that the said decree makes the injunction prayed for perpetual; whereas the appellants maintain that no contract with the said railroad companies is violated by imposing the taxes in question, and that the State has the right to impose the taxes in question, and hence that the Circuit Court ought to have discontinued and denied the injunctions.

The main question is similar in each of the three cases; but its solution will depend upon the construction of the Acts of the General Assembly of the State of South Carolina constituting the charters of these companies.

It is proposed, in this argument, to present and examine those Acts in the order of the cases as above stated.

I.

First, the South Carolina Railroad Company.

This company is the result of the union of two distinct companies, namely: The Cincinnati and Charleston Railroad Company and the South Carolina Canal and Railroad Company.

The latter company was incorporated by an Act of the General Assembly, passed in December, 1827, and entitled

"An Act to authorize the formation of a company for constructing railroads or canals from the city of Charleston to the towns of Columbia, Camden and Hamburg."

Statutes at Large, Vol. 8, p. 354.

This Act was amended by an Act entitled "An Act to amend an Act entitled 'An Act,'" &c., passed in January, 1828.

Statutes at Large, Vol. 8, p. 355.

Under the powers granted them in these two Acts, the South Carolina Canal and Railroad Company, built a railway from Charleston to Hamburg, during the year 1833.

Statutes at Large, Vol. 8, p. 384.

South Carolina R. R. Co. vs. *Columbia and Augusta R. R. Co.*, 13 Rich. Eq. R., p. 340.

The Cincinnati and Charleston Railroad Company was incorporated by Act of the General Assembly, passed in 1835, entitled "An Act to incorporate the Cincinnati and Charleston Railroad Company"

Statutes at Large, Vol. 8, p. 409.

The name of this company was changed by Act of the General Assembly, passed in 1836, to the Louisville, Cincinnati and Charleston Railroad Company.

Statutes at Large, Vol. 8, p. 96.

In 1843 the name of the company was again changed to the South Carolina Railroad Company.

Statutes at Large, Vol. 11, p. 213.

By the same Act provision was made, and authority given upon certain conditions, to the said South Carolina Railroad Company to unite with the South Carolina Railroad and

Canal Company, and thereafter to be one corporation, under the name of the South Carolina Railroad Company.

Statutes at Large, Vol. 11, p. 273.

The requirements of this Act were complied with, and thus the present South Carolina Railroad Company was formed.

The property now held by the South Carolina Railroad Company consists of two classes: *First*, the property originally acquired and held under the charter of the South Carolina Canal and Railroad Company; and, *Second*, the property acquired and held under the charter of the Cincinnati and Charleston Railroad Company, subsequently known as the Louisville, Cincinnati and Charleston Railroad Company.

The appellants maintain that the property of the present South Carolina Railroad Company is held under the provisions of the charters of the two companies of which it was originally composed, and not under the provisions exclusively of the Louisville, Cincinnati and Charleston Railroad Company, as is maintained by the appellees.

II

The South Carolina Canal and Railroad Company acquired its franchise and property under the provisions of the Acts of 1827 and 1828, already cited.

Statutes at Large, Vol. 8, pp. 354, 355.

The first Section of the latter Act is as follows:

"That the company provided for in the aforesaid Act, and hereinafter more especially incorporated and authorized, shall, and may direct and confine their first efforts and enterprise to the formation and completion of the railroad com-

munication between Charleston and the Savannah River, at or near Hamburg, and other points or places on the said river, by branch or branches of the said railroad, in the manner hereinafter mentioned; and when such communication shall be completed, or before, if the said company shall find it practicable and advantageous, they shall have power and authority to lay off and construct branches thereof to Columbia and Camden, or to the most convenient points at or near these towns, or otherwise to construct railroad or railroads between these two towns and Charleston; and the right to make, keep up and employ such railroads, shall be vested in the company herein and hereby incorporated exclusively; and for the term of time hereinafter mentioned, no other communication between Charleston and Savannah River, at or near Hamburg, or the waters of the Savannah River, or the towns of Columbia and Camden, or to any point on the rivers, at or near the same, by other railroads, or newly constructed canals, shall be constructed by or under the authority of this State."

The 9th Section of the same Act is as follows:

"*And be it further enacted by the authority aforesaid*, That the said South Carolina Canal and Railroad Company shall have power and capacity to purchase, and have and hold in fee simple, or for years, to them and their successors, any lands, tenements or hereditaments, that they may find necessary for the site, on and along which to locate, run and establish the aforesaid railroad and railroads, or any branches thereof, or to vary or alter the plan or plans, and of such breadth and dimensions, through the whole course of the road and roads, as they may see fit; and also, in like manner, to purchase any lands contiguous, or in the vicinity of the railroad and railroads hereby authorized, that they may find

necessary for the procuring, and from time to time, readily obtaining all necessary or proper materials of what kind soever, for the constructing, repairing and adequately guarding and sustaining the said railroad or railroads, and in like manner to purchase all private rights of way on land, and all necessary privileges in waters or water courses, that may lie on or across the route through which the said railroad or railroads may pass, and also all lands contiguous thereto that may be found necessary for the erecting of toll-houses, storehouses, work shops, barns, stables, residences and accommodations for servants or agents, or mechanics, and for the stationing and sustaining all animals of labor. And the said company shall have power, if need be, to conduct their railroad across any public road, and by suitable bridges, over and across all or any rivers, creeks, waters, or water courses, that may be in the route; or if they should find it more convenient and suitable, may pass carriages using the road, by convenient boats, across the same, or through canals connecting different parts of the railroad: *Provided*, The said company shall not thereby obstruct the navigation thereof: *And provided*, That the said company shall so construct their railroad across all public roads as not to obstruct or injure the same."

The 14th Section of the same Act is as follows:

"*And be it further enacted by the authority aforesaid*, That the exclusive right to make, keep up and use the railroads and transportations thereby authorized by this Act, shall be for and during the term of thirty-six years, to be computed from the time when the said railroad from Charleston to the Savannah River at or near Hamburg, shall be completed for transportation: *Provided*, That the subscriptions of stocks or shares of the said company, to the

amount of at least three thousand five hundred shares as aforesaid, be filled up within six months from the passing of this Act, and the work from or between Charleston and the place aforesaid, be commenced within two years, and be completed within six years after the three thousand five hundred shares shall be subscribed. And after the said term of thirty-six years shall have elapsed, though the Legislature may authorize the construction of other railroads or canals, for the trade or intercourse contemplated herein, nevertheless the South Carolina Canal and Railroad Company shall remain, and be incorporate, and vested with all the estate, powers and privileges as to their own work herein granted and secured, except the exclusive right to make, keep up and use railroads over and through such parts of the country, that shall so have expired by the foregoing limitation; but the Legislature may renew and extend that exclusive right, upon such terms as may be prescribed by law, and be accepted by the said incorporated company; and that during the first period of thirty-six years, the stock of the company and the real estate that may be purchased by them, and connected with and be subservient to the works herein authorized, shall be exempted from taxation."

Under these provisions, the South Carolina Canal and Railroad Company built, as has already been stated, a railway from Charleston to Hamburg, and completed the same during the summer of 1833.

The Cincinnati and Charleston Railroad Company was incorporated, as has already been stated, in 1835.

The 1st Section of the Act of incorporation is as follows:

"SEC. 1. That for the purpose of establishing a communication by railroad, between the cities of Cincinnati, in the

State of Ohio, and Charleston, in the State of South Carolina, through the States of Kentucky, Tennessee, North Carolina and South Carolina, the formation of a company, to be called "The Cincinnati and Charleston Railroad Company," is hereby authorized, which, when formed, shall have corporate existence in perpetuity in each of the States aforesaid."

The 9th Section of the same Act is as follows:

"SEC. 9. That said company may construct branches of their road, provided such branches shall not conflict with any chartered rights, existing at the time of their construction: *And provided*, That they shall be attended with no exclusive privileges, except the exclusive right of transportation of goods, wares, merchandise, produce and persons thereon, subject to the rates hereinafter mentioned."

The 17th and 18th Sections of the same Act are as follows:

"SEC. 17. That the said company shall have power and may proceed to construct, as speedily as their means will permit, a railroad, with one or more tracks, to be used with steam, animal, or any other power, which shall pass through the States of Kentucky, Tennessee, North Carolina and South Carolina, so as to form a continuous line of railroad between the cities of Cincinnati and Charleston; the line of which road shall be established by the general Board of Directors, subject to the control of the stockholders at a general meeting. The said company may use any section of the said railroad before the whole may be completed, subject to the rates hereinafter mentioned."

"SEC. 18. Neither the said States of South Carolina, North Carolina, Tennessee or Kentucky shall, within the period of 36 years, from the first day of January, in the year of our Lord

one thousand eight hundred and thirty-six, authorize the construction of any railroad within twenty miles of the Railroad so to be constructed by the Cincinnati and Charleston Railroad Company, which shall connect any points or places on this railroad, or which shall run in the general direction thereof, without the consent of the said Company."

The 43d Section of the same Act is as follows:

"SEC. 43. That the capital stock in this Company, the dividends thereon, and all the property and estate, real and personal, belonging to the said Company, shall be forever exempt from taxation in each and every of the States of South Carolina, North Carolina, Tennessee and Kentucky; and it shall not be lawful for either of the said States, or any corporate, municipal, police or other authority thereof, or of any town, city, county or district thereof, to impose any tax on such stock or dividends, property or estate: *Provided*, That the said stock or dividends, when the said dividends shall exceed the legal interest of the State, may be subject to taxation by the State, in common with other money at interest, and interest thereon."

The name of the Company was changed in 1836 to the Louisville, Cincinnati and Charleston Railroad Company.

In the same year the charter of the Company was amended so as to discharge the Company from all obligation to construct any branches in the State of Kentucky, or to extend the main road in said State further than to Lexington.

Statutes at Large, Vol. 8., p. 431.

Under the charter conferred by the Act last cited, the Louisville, Cincinnati and Charleston railroad Company

built and completed, in the summer of 1842, the railway from the town of Branchville to Columbia.

South Carolina R. R. Co. vs. *Columbia and Augusta R. R. Co.*, 13 Rich. Eq. R., p. 341.

In 1843, the name of this Company was changed to the present name—the South Carolina Railroad Company,—and the said Company was authorized to unite with the South Carolina Canal and Railroad Company.

In 1844, the South Carolina Railroad Company was authorized to open a subscription for new stock in the capital of the Company, to be used in constructing a branch of their road from the main line to the town of Camden.

Statutes at Large, Vol. 11, p. 298.

This branch was subsequently built.

The property of the present South Carolina Railroad Company consists of the two following parts, namely: the road from Charleston to Branchville, and thence to Hamburg, built under the charter of the South Carolina Canal and Railroad Company; the road from Branchville to Columbia, built under the charter of the Louisville, Cincinnati and Charleston Railroad Company; and the branch from Kingville, a point on the line from Branchville to Columbia, to Camden, built by the South Carolina Railroad Company after the passage of the Act of 1843, under its own amended charter.

The South Carolina Railroad Company are thus seen to derive their right to own and maintain a railway from Charleston to Hamburg, and to acquire and hold estates and property necessary for such purpose, from the provisions of the charter of the South Carolina Canal and Railroad Company.

The original Cincinnati and Charleston Railroad Company, afterwards the Louisville, Cincinnati and Charleston Railroad Company, now the South Carolina Railroad Company, had no authority to acquire and hold property and estates, except for the purpose of building and keeping up a road to connect Charleston and Cincinnati.

The 32d Section of the Act of incorporation of the Cincinnati and Charleston Railroad Company is as follows:

"SEC. 32. The said Company may purchase, have and hold, in fee, or for a term of years, any lands, tenements, or hereditaments, which may be necessary for the said road, or any branch or appurtenance thereof, or for the erection of depositories, store-houses, houses for the officers, servants or agents, of the Company, or for the work-shops or foundries, to be used by the said Company, or for procuring timber, stone, or other materials necessary to the construction of the road, its branches or appurtenances, or for effecting transportation thereon, *and for no other purpose whatever.*"

Statutes at Large, Vol. 8., p. 415.

The said company could not have acquired property and estates, even under an Act of the General Assembly, for the purpose of connecting, by railroad, the city of Charleston with the towns of Columbia, Camden and Hamburg, for thirty-six years after the completion of the railroad built by the South Carolina Canal and Railroad Company from Charleston to Hamburg, except with the consent of the said South Carolina Canal and Railroad Company, inasmuch as the *exclusive* right to connect, by railroad, the said city of Charleston with the said towns, was expressly given to the said company in their charter for thirty-six years.

The 1st and 14th Sections of the Act of 1828, amending

the Act of incorporation of 1827, and granting these exclusive rights, have already been quoted.

III.

The 14th Section of the Act amending the original charter of the South Carolina Canal and Railroad Company, provided for the exemption of the stock and real estate of that company from taxation for the period of thirty-six years from the completion, for transportation, of the road from Charleston to Hamburg.

As before stated, this road was completed and went into operation during the year 1833. The exemption expired, therefore, during the year 1869.

The appellants maintain that from the moment of the expiration of the said period of thirty-six years the property and estates originally acquired and still held and owned by the South Carolina Railroad Company under the provisions of the charter of the South Carolina Canal and Railroad Company, became subject again to the taxing power of the State. Such property consisted of the "real estate purchased by them, and connected with and subservient to the works" of the said railroad, and lying within the Counties of Charleston, Colleton, Orangeburg, Barnwell and Edgefield.

That this property was held by the South Carolina Railroad Company under the provisions of the charter of the South Carolina Canal and Railroad Company has been held by the Courts of South Carolina.

South Carolina R. R. Co. vs. *Columbia and Augusta R. R. Co.*, 13 Rich. Eq. R., 340.

At page 344, Chancellor Carroll speaks of the "corpo-

rate rights of the plaintiffs, as derived from the charter of the South Carolina Canal and Railroad Company."

At page 348 he says: "The Act of 1843, (meaning the Act changing the name, and authorizing the union with the South Carolina Canal and Railroad Company,) in no wise affected the rights or privileges of the South Carolina Railroad Company, under the charter of the Louisville, Cincinnati and Charleston Railroad Company, except by adding to them those of the South Carolina Canal and Railroad Company."

At page 350 he again says: "It was competent for the South Carolina Canal and Railroad Company to waive or renounce, as they certainly did, upon sufficient consideration, the benefit or privilege (securing to them the exclusive right of constructing railway communication from Charleston to Columbia) in favor of a like corporation, created by the same legislative authority."

At page 356 he says: "The most important of certain exclusive privilegs to which the South Carolina Railroad Company lay claim, is that derived from the charter of the South Carolina Canal and Railroad Company, a privilege which fast hastens to extinction, and which can endure but for a few months," &c.

It thus appears that the South Carolina Railroad Company hold their railway from Charleston to Hamburg under the charter of the South Carolina Canal and Railroad Company; they hold it, therefore, under a different charter from that of the Louisville, Cincinnati and Charleston Railroad Company.

When the South Carolina Railroad Company acquired the franchises, property and estates of the South Carolina

Canal and Railroad Company, they acquired them with all the privileges, contracts, liabilities, &c., of the original Company.

The 2d Section of the Act of 1843, authorizing the union, is as follows:

"SEC. 2. That whenever the written consent of all the stockholders of the South Carolina Canal and Railroad Company shall have been obtained, the said South Carolina Canal and Railroad Company shall be merged in the said South Carolina Railroad Company, and thereupon and thereafter all the rights, privileges and property belonging to the said South Carolina Canal and Railroad Company, shall be vested in the said South Carolina Railroad Company, and the said South Carolina Railroad Company shall be liable for all the debts and contracts of the said South Carolina Canal and Railroad Company; and the stock and property of the said South Carolina Railroad Company shall be subject to the same liens and charges to which the stock and property of the said South Carolina Canal and Railroad Company may be liable, and in the same relative order in which the said liens and charges now stand."

Statutes at Large, Vol. 11, p. 273.

One of the privileges of the South Carolina Canal and Railroad Company was, that the real estate of that company should be exempt from taxation for a period of thirty-six years from the completion of the road.

"Where a corporation, enjoying an exemption from taxation, is united with other corporations not having such exemption by a Legislative Act of consolidation, this does not extend the exemption beyond the first corporation, and the

property of the other corporations, being the road of a railway, is still liable to taxation."

2 Redfield on Railways, § 299.

The same doctrine is declared in the case of the *Philadelphia, Wilmington and Baltimore Railroad Company* vs. *Maryland*, 10 How., 376.

In that case the Court says: "The Philadelphia, Wilmington and Baltimore Railroad Company is a corporation composed of several railroad companies, which had been previously chartered by the States of Maryland, Delaware and Pennsylvania, and which, by the corresponding laws of their respective States, were united together to form one corporation. One of the companies, which forms part of this corporation, was originally the Baltimore and Port Deposit Railroad Company, and was chartered by Maryland, by an Act passed in 1831. The Baltimore and Delaware Railroad Company was another of the original corporations also chartered by Maryland in 1831. This company was afterwards, by an Act of 1835, and a corresponding law passed by the State of Delaware, united with the Wilmington and Susquehanna Railroad Company, which had been previously chartered by Delaware, the two companies, when united, taking the corporate name of the latter. Afterwards, by an Act of the General Assembly of Maryland, and corresponding laws passed by Delaware and Pennsylvania, the last named company, together with the Baltimore and Port Deposit Railroad Company, was authorized to unite with the Philadelphia, Wilmington and Baltimore Railroad Company.

In 1841, after the union of these companies, the portion of the road which belonged to the Baltimore and Port Deposit Railroad Company before the union was assessed as a part of the taxable property of the State. The charter of the

said road made no provision for exempting its stocks or its property, real or personal, from taxation. The law which authorized the Wilmington and Susquehanna Railroad Company and the Baltimore and Port Deposit Railroad Company to unite themselves with the Philadelphia, Wilmington and Baltimore Railroad Company, declared that the last named company should be entitled to all the powers and privileges and advantages at that time belonging to these two companies.

"Now, as these companies hold their corporate privileges under different charters, the evident meaning of this provision is, that whatever privileges and advantages either of them possessed shall, in like manner, be held and possessed by the new company to the extent of the road they had respectively occupied before the union; that it should stand in their place, and possess the powers, rights and privileges they had severally enjoyed in the portions of the road which had previously belonged to them. * * * * The plaintiff in error, therefore, took the property of the Baltimore and Port Deposit Railroad Company, with all the liabilities to which it was subject in the hands of that company. * * * * As that company held it, so it is now held by the plaintiff in error, with the same privileges, powers and liabilities; and as the property assessed was liable to taxation in the hands of the original corporation, it is equally liable in the hands of the company with which it is now consolidated."

These principles seem to be fully applicable to the present case. It is evident, therefore, that since the property acquired and held under the charter of the South Carolina Canal and Railroad Company would, under that charter, have become liable to taxation in the hands of that com-

property of the other corporations, being the road of a railway, is still liable to taxation."

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In 1841, after the union of these companies, the portion of the road which belonged to the Baltimore and Port Deposit Railroad Company before the union was assessed as a part of the taxable property of the State. The charter of the

said road made no provision for exempting its stocks or its property, real or personal, from taxation. The law which authorized the Wilmington and Susquehanna Railroad Company and the Baltimore and Port Deposit Railroad Company to unite themselves with the Philadelphia, Wilmington and Baltimore Railroad Company, declared that the last named company should be entitled to all the powers and privileges and advantages at that time belonging to these two companies.

"Now, as these companies hold their corporate privileges under different charters, the evident meaning of this provision is, that whatever privileges and advantages either of them possessed shall, in like manner, be held and possessed by the new company to the extent of the road they had respectively occupied before the union; that it should stand in their place, and possess the powers, rights and privileges they had severally enjoyed in the portions of the road which had previously belonged to them. * * * * The plaintiff in error, therefore, took the property of the Baltimore and Port Deposit Railroad Company, with all the liabilities to which it was subject in the hands of that company. * * * * As that company held it, so it is now held by the plaintiff in error, with the same privileges, powers and liabilities; and as the property assessed was liable to taxation in the hands of the original corporation, it is equally liable in the hands of the company with which it is now consolidated."

These principles seem to be fully applicable to the present case. It is evident, therefore, that since the property acquired and held under the charter of the South Carolina Canal and Railroad Company would, under that charter, have become liable to taxation in the hands of that com-

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pany, in the year 1869, that property is equally liable to taxation in the hands of the present South Carolina Railroad Company. Since, then, the real estate of the South Carolina Railroad Company, forming the road-bed from Charleston to Hamburg, together with the real estate connected with and subservient to the same, is held under the charter of the South Carolina Canal and Railroad Company, such property, under the provisions of that charter, was liable to taxation for the fiscal year beginning November 1, 1869.

In opposition to the conclusion now reached by the appellants, it was contended, in the Court below, by the appellees, that the Act of 1842, Section 2, operates as a merger of the two estates, or the estates of the companies.

This view rests wholly in the use, in Section 2 of that Act, of the words, "shall be merged." From these words it was argued that the Act effected a merger, in the strict sense of that term, and that the estate of the South Carolina Canal and Railroad Company, being the lesser estate, was merged or drowned in the greater estate of the Louisville, Cincinnati and Charleston Railroad Company, now named the South Carolina Railroad Company.

A simple reading of the Section in question negatives the idea that such was the intention of the Act.

But the view becomes wholly untenable when we examine the doctrine of merger.

Merger is thus defined: "When a greater estate and less coincide and meet in one and the same person, without any intermediate estate, the less is immediately merged, that is, sunk or drowned in the latter. Thus, if there be a tenant for years, and the reversion in fee simple descends to, or is

purchased by him, the term of years is merged in the inheritance, and no longer exists."

2 *Black. Comm.*, 177.

Merger is produced, either from the meeting of an estate of higher degree with an estate of inferior degree, or from the meeting of the particular estate and the immediate reversion, in the same person.

Merger never exists, except when the subject of the two estates is the same. It arises out of the union of two estates *in the same property.*

Thus a tenancy for years is *merged* in a reversion in fee simple in the *same property.* Two estates, each of which exists in separate property, can never be *merged*, in the technical sense of the term.

The estate of the South Carolina Canal and Railroad Company arose out of the ownership of the property of that company. The estate of the Louisville, Cincinnati and Charleston Railroad Company arose out of the ownership by that company of an entirely separate and different property. How can there be a merger of two such estates?

Again, how can it be said that the estate of the one company is greater or less than the estate of the other company, either in kind or degree?

A simple difference in the length of duration of an exemption from taxation does not make a difference in the degree of an estate. The estates of these two companies do not differ in degree. The only difference is that one estate has an incidental privilege of longer duration than the other. The amount or extent of ownership,—that which determines the degree of the estate,—was the same in each company.

There is, therefore, no place for a merger: *first*, because the estates arise out of or exist in different properties; and,

second, because the one estate is not greater or less than the other.

The Act of 1843 was plainly intended to be simply a legislative union or consolidation of the two companies.

The effect of that union has already been pointed out. It was, as in the case of the *Philadelphia, Wilmington and Baltimore Railroad Company* vs. *Maryland*, to unite under the control and ownership of one company, two estates, which thenceforth were held subject to the same liabilities and possessed of the same privileges as originally were conferred on each separate company.

IV.

A second question now arises. Is the property of the South Carolina Railroad Company, acquired and held under the charter of the Louisville, Cincinnati and Charleston Railroad Company, passed in 1835, and the property acquired since the union of the Louisville, Cincinnati and Charleston Railroad Company and the South Carolina Canal and Railroad Company, in 1843, exempt from taxation under the provisions of the 43d Section of the original Act incorporating the Cincinnati and Charleston Railroad Company?

The 43d Section of that Act has already been quoted at length.

It is important, in the view of the appellants, to examine carfeully the several Acts relating to this road.

The first Section of the Act incorporating the Cincinnati and Charleston Railroad Company, declares the said Company is incorporated "for the purpose of establishing a communication by railroad between the cities

of Cincinnati, in the State of Ohio, and Charleston, in the State of South Carolina, through the States of Kentucky, Tennessee, North Carolina and South Carolina."

As already stated, by an amendatory Act, passed in 1836, the company was released from its obligation to build any branches in Kentucky, or to extend the main road beyond Lexington, in that State.

The 32d Section of the Act of incorporation of 1836 gives them power to purchase property, and hold the same, "which may be necessary for the said road, or for any branch or appurtenance thereof, or for the erection of depositories, &c., or for workshops or foundries, to be used for the said company, or for procuring timber, stone or other materials necessary to the construction of the road, its branches or appurtenances, or for effecting transportation thereon, *and for no other purpose whatever.*"

The 17th Section of the same Act provides that the company "shall have power and may proceed to construct, as speedily as their means will permit, a railroad, with one or more tracks, to be used with steam, animal or any other power, which shall pass through the States of Kentucky, Tennessee, North Carolina and South Carolina, so as to form a continuous line of railroad between the cities of Cincinnati and Charleston."

The 18th Section prohibits the States above named from authorizing the construction, within the period of thirty-six years, of any railroad within those States, "within twenty miles of *the railroad so to be constructed by the Cincinnati and Charleston Railroad Company*, which shall connect any points or places on their railroad, or which shall run in the general direction thereof, without the consent of the said company."

A careful consideration of the whole Act, and of each

Section, discloses the purpose of its enactment. The company was chartered, was clothed with extraordinary powers and privileges, with a sole and paramount purpose, to wit: the constructing of a railroad from Charleston to Cincinnati, or as it was subsequently modified, to Lexington, Ky.

It was for *this* purpose that it was authorized to acquire and hold property, "*and for no other purpose whatever.*"

It was for *this* purpose that corporate existence in perpetuity was conferred on it, as shown by the express words of the first Section.

It was for *this* purpose that the property and estates, real and personal, were exempted from taxation "in the States of *South Carolina, North Carolina, Tennessee* and *Kentucky.*"

This purpose is kept constantly in view in all the Acts relating to this company. Thus, in Section 47, of the original Act, it is provided that "this Act shall be inoperative and void unless Acts for a similar purpose be enacted by the Legislatures of North Carolina, Tennessee and Kentucky."

Again, in the amendatory Act of 1836, in Section 4, it is provided as follows:

"SEC. 4. In case the State of Kentucky should not agree to the amendments above proposed, the said railroad company shall be, and hereby is constituted a body politic and corporate, in the State of South Carolina, North Carolina and Tennessee, with all the powers, rights and privileges granted to it by the Acts of the Legislature of the last mentioned States incorporating it, discharged from all obligation to construct any road in the State of Kentucky, or to have any resident directors, or to have more than twenty-one general directors; but nothing herein contained shall be construed to release the said company from the obligation to extend their road to the southern boundary of Kentucky."

Statutes at Large, Vol. 8, p. 431.

The contract, as it is disclosed by these Acts, appears, therefore, to be the construction of a railroad so as to connect Charleston with the southern boundary of Kentucky, on the part of the company, and the grant of special and extraordinary powers, privileges and exemptions on the part of the State *for that purpose.*

All public grants, or grants of special powers by the State, to individuals or corporations, are always construed strictly as against the grantees and in favor of the State.

Jackson vs. *Lamphire*, 3 Pet., 288.

United States vs. *Arredondo*, 6 Pet., 736.

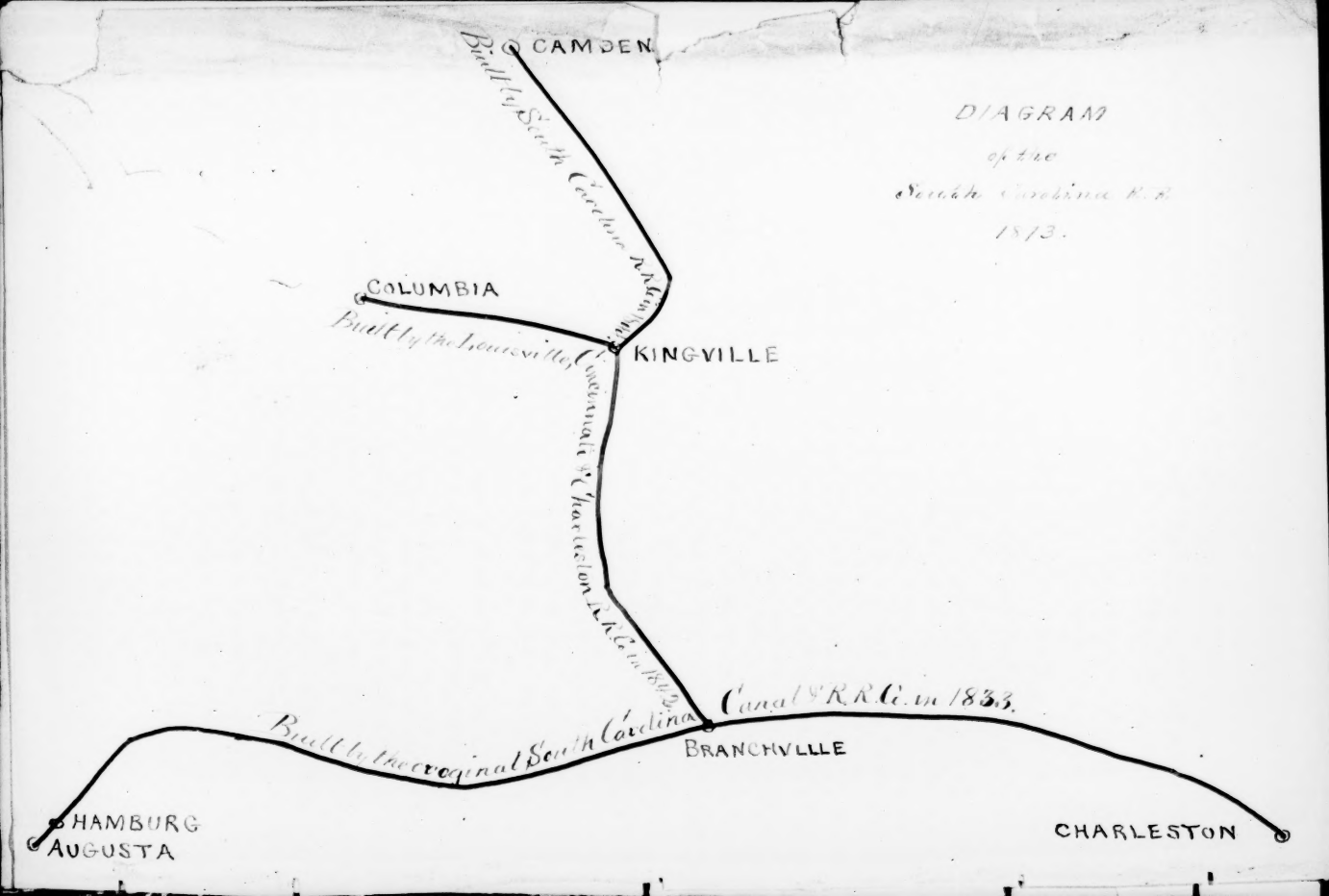
Charles River Bridge vs. *Warren Bridge*, 11 Pet., 544.

Especially does this rule prevail in the case of a grant of perpetual exemption from taxation—a relinquishment of one of the most essential and transcendent powers of government.

Jefferson Bank vs. *Skelly*, 1 Black., 443.

Charles River Bridge vs. *Warren Bridge*, 11 Pet., 544.

As the railroad from Charleston to Hamburg had been built, and was in operation two years before the Act incorporating the Cincinnati and Charleston Railroad Company was passed, the said Act did not contemplate any interference with the chartered rights and privileges of the South Carolina Canal and Railroad Company. It did not require or permit the Cincinnati and Charleston Railroad Company to build a railroad between Charleston and Columbia, or Charleston and Hamburg, or any point on the line of the said road, but it simply meant that a road should be built which might unite with the road of the South Carolina Canal and Railroad Company at such point as might be agreed upon between the two companies; otherwise the Act by the


CAMDEN
Built by South Carolina R.R.
COLUMBIA
Built by the Louisville, C.
KINGVILLE
Continuation of C. Charleston R.R. Co. in 1833
Canal & R.R. Co. in 1833.
Built by the original South Carolina
BRANCHVLLLE
HAMBURG
AUGUSTA
CHARLESTON
DIAGRAM
of the
South Carolina R.R.
1873.

General Assembly of 1828, giving exclusive privileges to the South Carolina Canal and Railroad Company to make and keep up a railroad between Charleston and Hamburg, with branches to Columbia and Camden, and prohibiting, for the period of thirty-six years, the incorporation of any company for the purpose of connecting, by railroads or canals, the city of Charleston with the said towns, would have been violated, and its provisions repealed.

This is the true intent and meaning of the Act incorporating the Cincinnati and Charleston Railroad Company, and their powers and privileges granted before their name was changed to the South Carolina Railroad Company, continued to be their powers and privileges after the South Carolina Canal and Railroad Company was united with them.

On page 33 of the record of this case will be found certain documentary evidence introduced on behalf of the appellees, being a report of a committee of the stockholders of the Louisville, Cincinnati and Charleston Railroad Company in 1837. The committee are discussing the proposed union of the Louisville, Cincinnati and Charleston Railroad Company with the South Carolina Canal and Railroad Company. They say: "Thus a question arises as to the nature of this connection. This can only be by a purchase of the whole work, or by some arrangement by which that company shall agree to transport on their road the passengers and merchandise destined for Charleston, which may arrive by the Louisville, Cincinnati and Charleston Railroad. But the latter course is subject to the following objection: It might be questioned whether this were a *compliance with the terms of the charter.* It would not be the constructing of a road between Lexington and Charleston, but between Lexington and Columbia. *It would not be a Louisville, Cincinnati and*

Charleston Railroad Company, but a Louisville, Cincinnati and Columbia Railroad Company."

The appellees rely upon the Act of 1840, entitled "An Act to authorize the Louisville, Cincinnati and Charleston Railroad Company and the Southwestern Railroad Bank to reduce their stock, and for other purposes."

Statutes at Large, Vol. 11, p. 127.

It is claimed that this Act released the company from the obligation to construct a road beyond the limits of the State of South Carolina.

But this view is not sustained by an examination of the Act, which nowhere expresses such a purpose.

The waiver of the whole purpose and effort of many years, to aid and advance which extraordinary powers and privileges had been granted, is not to be lightly *implied*.

This would be in the nature of a new grant of powers and privileges—a grant which no Court will recognize or sustain, unless made in express terms.

The 43d Section of the charter of the Cincinnati and Charleston Railroad Company, before the union of the two companies, having applied only to property acquired for the purposes specified, has remained, since that union, applicable to such property, and no other.

The construction of a legislative contract is to be determined by a consideration of the purposes for which it was made; in other words, the intention of the contracting parties.

"In construing this Act of incorporation, we are to bear in mind the time and circumstances under which it was

made, but more especially to take into consideration every part and clause of the Act, and deduce from it the true meaning and intent of the parties. The Act, like every other Act and charter of the same kind, is a contract between the Government, on the one part, and the undertakers accepting it, on the other part; and, therefore, what they both intended by the terms used, if we can ascertain it, forms the true construction of such a contract."

Boston and Lowell R. R. Co. vs. *Salem and Lowell R. R. Co.*, 2 Gray., 28.

What was the intent of both parties to this charter of incorporation or legislative contract?

It was, on the part of the State, that it should grant certain powers and privileges; and, on the part of the company, that it should use these powers and privileges to effect the purpose expressed in the charter or Act of incorporation. That purpose was originally to connect Charleston with Cincinnati by railroad, a purpose afterwards limited, first to building the projected road to Lexington, Ky., and finally to the southern boundary of the State of Kentucky.

This view is expressed by the Court of Errors of the State of South Carolina in 1838, in the case of *The Louisville, Cincinnati and Charleston Railroad Company* vs. *Chappell, Rice's (S. C.) Rep.*, 383.

"The enlarged end and object of this great road, especially, is for the transportation and intercourse, commercial and social, of several different States, whose interests are ever to be regarded, and the mutual confidence that belongs to such a work sacredly fulfilled. * * * Such a railroad company as ours should be held as a highway, on account of its great objects, and for the same reasons to be kept under

public control. Is it not wise to hold such a company as the guardians or lessees of a great highway, endowed with a public franchise, yet subject to the control which their purposes indicate, as necessary and proper for such an establishment, and which the general right to use the road absolutely requires?"

The preamble of the Act incorporating this company states expressly, that it is for the purpose of establishing communication by railroad between the cities of Cincinnati and Charleston, through the States of Kentucky, Tennessee, North Carolina and South Carolina.

The only express modification of that purpose has been to release the company from the duty of extending their road beyond the southern line of Kentucky.

The express release of the company, on two occasions, from the original obligation to extend their road to Cincinnati, plainly shows that the company, as well as the General Assembly, understood that, in the absence of such express release, the original obligation of the company was binding and imperative.

Can any further release be now implied? Can a release from the whole purpose of connecting Charleston with the West and North-west be implied, leaving nothing of the great line, whose construction was the one inducement to the extraordinary grant of perpetual exemption from taxation, except the single track from Branchville to Columbia, with the branch from Kingville to Camden, a total length of not more than one hundred miles?

In the view of the appellants, such implications cannot be asserted or maintained in this Court. They confidently maintain that, with the abandonment of the great design to which the 43d Section of the Act of 1835 was designed to contribute, the extraordinary grant contained in that Section became revocable at the will of the General Assembly.

In the case of the *South Carolina R. R. Co.* vs. *The Columbia and Augusta R. R Co.*, 13 Rich. Eq. R., 340, the Court says: "Nothing more has been done under the charter of said road than the construction of a railroad from Branchville to Columbia. * * * * General commercial embarrassment, and the withdrawal of their subscriptions by stockholders not resident within the State, disabled the company, then bearing the name of the Louisville, Cincinnati and Charleston Railroad Company, from extending their road from Branchville, as they had proposed, beyond Columbia, toward Butt Mountain Gap. But there was nothing save lack of capital to debar the parties who had succeeded to the chartered rights of the Louisville, Cincinnati and Charleston Railroad Campany, from resuming that work immediately after the passage of the Act of 1843, had they chosen to do so."

Again he says, at page 348: "It is easy to apprehend that their failure to build the projected road may have diminished their chartered privileges, but how it could have enlarged them, is wholly unintelligible."

In determining this question, the appellants ask the Court to look at all the circumstances under which the various charters of incorporation under which the South Carolina Railroad Company now holds its property, were granted, to consider the conditions on which they were granted, and the ends to be attained by means of such grants. It will be seen, from what has been said before, that the Cincinnati and Charleston Railroad was considered, at its inception, as a great object of public improvement and medium of commercial and social intercourse between neighboring States. The corporation was invested with extraordinary privileges and rights; with unlimited power to borrow money and in-

crease their capital stock, with their bonds, to the amount of $2,000,000, secured by the good faith and credit of the State; with grants of public lands, and the right to acquire the lands of individuals for the purposes of the road; with an exemption of the property and estates belonging to them from all taxation; yet, during thirty years, this company have accomplished none of the objects of their incorporation, except it be the building of the railroad from Branchville to Columbia, and the branch road to the town of Camden.

This corporation has actually abandoned the object for which they were incorporated, and now, after they have bought the completed road of the South Carolina Canal and Railroad Company, they ask that the exemption from taxation, which they claim to be perpetual under the provisions of the 43d Section of the charter of the Cincinnati and Charleston Railroad Company, may be extended over a road built and completed three years before their incorporation, and ten years before their name was changed to the South Carolina Railroad Company. Was it the intention of the Legislature that the powers granted the Cincinnati and Charleston Railroad Company should be allowed to remain unexecuted, that no public good or convenience should be accomplished for a period of thirty years, and yet that the privileges acquired for one purpose should be extended over other property of the company, subsequently acquired for an entirely different purpose? Must the contract between the State and the company be considered as altogether in favor of the company and against the State, notwithstanding the non use by the company of the powers granted in their charter, and their failure to render the State the public benefit which formed the consideration of their contract? Had the South Carolina Rail-

road Company gone on with their work and completed the railroads contemplated, even after they had acquired the property and franchises of the South Carolina Canal and Railroad Company, there might be force in their claim that the State could not resume the right secured to them, except by the strictest compliance with established legal principles.

But, in view of the non-use of their powers, and their failure to confer the public benefit they had promised, has not the 43d Section of their charter more the features of a gratuity than an executed contract. And, being a gratuity, may not the State, by Act of the Legislature, resume the right so long parted with?

In case of the *Rector, etc., of Christ Church, Philadelphia*, vs. *The County of Philadelphia*, 24 How., 301, the Court says: "In the year 1833, the Legislature of Pennsylvania passed an Act, which recites that Christ Church Hospital had for many years afforded an asylum to numerous poor and distressed widows, who would probably else have become a public charge; and it being represented that, in consequence of the decay of the buildings of the hospital estate, and the increasing burden of taxes, its means were curtailed, etc., they enacted that the real property, including ground rents, belonging and payable to said hospital, should remain free from taxes. In 1851, the same authority enacted that "all property, real and personal, belonging to any association or incorporated company, which is now by law exempt from taxation, etc., shall hereafter be subject to taxation, in the same manner, and for the same purposes, as other property, and so much of any law as is hereby repealed and supplied is repealed." "The plaintiffs claim that the exemption conceded by the Act of 1833 is perpetual, and that the Act is, in effect, a

contract. This concession of the Legislature was spontaneous, and no service or duty or other remunerative condition was imposed on the corporation. It belongs to the class of laws denominated *privilegia favorabilia*. It attached only to such real property as belonged to the corporation, and while it remained as its property; but it is not a necessary implication, from these facts, that the concession is perpetual, or was designed to continue during the corporate existence.

"Such an interpretation is not to be favored, as the power of taxation is necessary to the existence of the State, and must be exerted according to the varying conditions of the Commonwealth. The Act of 1838 belongs to a class of statutes in which the narrowest meaning is to be taken which will fairly carry out the intent of the Legislature. All laws, all political institutions, are dispositions for the future, and their professed object is to afford a steady and permanent security to the interests of society. Bentham says that "all laws may be said to be framed with a view to perpetuity; but perpetual is not synonymous with irrevocable; and the principle on which all laws ought to be, and the greater part of them have been, established, is that of defeasible perpetuity—a perpetuity defeasible by an alteration of the circumstances and reasons on which the law is founded." The inducements that moved the Legislature to concede the favor contained in the Act of 1833 are special, and were, probably, temporary in their operation. The usefulness of the corporation had been curtailed in consequence of the decay of the buildings and the burden of taxes. * *

"It is in the nature of such a privilege as the Act of 1833 confers, that it exists *bene placitum*, and may be revoked at the pleasure of the sovereign."

In the present case, has there not been an alteration of circumstances and reasons on which the law of 1835 was

founded? Were not the inducements that moved the Legislature to concede the favor contained in the Act incorporating the Cincinnati and Charleston Railroad Company special, and were they not intended to be of force only in case the company favored should return the promised benefit? Is it not in the nature of such a privilege as the Act of 1835 confers, considering all the circumstances of the case, that it exists *bene placitum*, and may be revoked at the pleasure of the State, unless the company complied with the condition on which the grant was made? Was not the concession of the Legislature in this case, as well as in the case just referred to, spontaneous? and although a service and duty was, in this case, unlike the other, imposed on the corporation, yet the corporation having failed to perform the service and duty, can it claim, if the concession has been revoked, that such revocation violates the contract which the company has not, for thirty years, considered obligatory upon them? Is not the charter of the Cincinnati and Charleston Railroad Company mutually obligatory, and can the South Carolina Railroad Company claim to extend their immunities over the property not acquired for the purposes for which the former company was incorporated, until they have, at least, made each property subservient to the end for which their immunities were granted. (See *Vermont and Canada Railroad Company* vs. *Vermont Central Railroad Company*, 34 Ver., 50.)

That there has been a non-use for many years of the powers granted to the Cincinnati and Charleston Railroad Company, appears from the decree of Chancellor Carroll, before referred to. Whether such non-user is sufficient to work a forfeiture of all the chartered rights of the said company now possessed by the South Carolina Railroad Company, is not before the Court for adjudication; but whether such non-user

might not have had much weight with the Legislature, when it declared that the property of all corporations within the State, or that thereafter might be incorporated, should be taxed, is submitted for consideration.

In Angell and Ames on Corporations, § 111, it is said that "a charter of incorporation so far requires, by implication, that the body corporate shall perform the business for which it was instituted that a substantial suspension of the same is a violation of its charter."

It is admitted that the uniform current of decisions in this Court has been to the effect, that Charters of incorporation are contracts between the State and the corporations, and, being contracts, the Legislature cannot pass any laws impairing their obligations, by revoking the powers given them, or repealing or amending their Charters without their consent, unless power so to do is expressly reserved to the State; yet this Court has never failed to hold that an exemption from taxation must clearly appear, in express terms, and as a part of a fair and deliberate contract, in which a full execution of the intent and purpose of the contract requires that the exemption should be upheld.

The Appellants cannot believe that such a contract exists between the State of South Carolina and the South Carolina Railroad Company.

V.

If the exemption from taxation of the property of the South Carolina Railroad Company, acquired under the Charter of the Louisville, Cincinnati and Charleston Rail-

road Company, is revocable by the State, has such revocation taken place?

The appellants say that this has been done, both by the present Constitution of the State of South Carolina, and by the Statutes passed under that Constitution.

Article IX, Section 1, of that Constitution is as follows:

"SEC. 1. The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, the proceeds of which alone shall be taxed; and also exempting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes."

Statutes at Large, Vol. 14, p. 20.

Article XII, Section 2, of the same, is as follows:

"SEC. 2. The property of corporations now existing or hereafter created, shall be subject to taxation, except in cases otherwise provided for in this Constitution."

Statutes at Large, Vol. 14, p 24.

Section 1 of an Act entitled "An Act providing for the assessment and taxation of property," passed September 15, 1868, is as follows:

"SECTION 1. That all real and personal property in this State, and personal property of residents of the State, which may be kept, or used temporarily out of this State, with the intention of bringing the same into the State, or which has been sent out of the State for sale and not yet sold; all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, of parties resident in this State, shall be subject to taxation."

Statutes at Large, Vol. 14, p. 27.

From these references it sufficiently appears that the State has in terms recalled and revoked, so far as constitutional and legislative enactments and authority can do so, the exemption originally granted in the 43d Section of the Act of 1835, under which the present South Carolina Railroad Company now claims a perpetual exemption from all taxation.

The question involved in the second case in the order above named, is: Is the property of the Northeastern Railroad Company liable to taxation by the State of South Carolina?

The Northeastern Railroad Company was incorporated by an Act of the General Assembly of the State of South Carolina, passed December 16, 1851.

Statutes at Large, Vol. 12, p. 129.

This Act contained a grant of the usual powers of railroad companies, and the charter was granted for a term of fifty years.

At the time of the incorporation of this company, the 41st Section of the Act of the General Assembly, passed December, 1841, was in force in the State.

That Section is as follows:

"SEC. 41. *Be it further enacted*, That it shall become part of the charter of every corporation, which shall, at the present, or any succeeding session of the General Assembly, receive a grant of a charter, or any renewal, amendment or

modification thereof, (unless the Act granting such charter, renewal, amendment or modification, shall, in express terms, except it,) that every charter or incorporation granted, renewed or modified as aforesaid, shall, at all times, remain subject to amendment, alteration, or repeal, by the legislative authority."

Statutes at Large, Vol. 11, p. 168.

The Act of incorporation of the Northeastern Railroad Company did not except the charter of that company from the operation of the above Section: it, therefore, became part of that Act.

The Northeastern Railroad Company received extensions of their powers and privileges at various times subsequently, but in no case did the amendatory Acts except the company from the operation of the 41st Section of the Act of 1841, as now quoted.

Statutes at Large, Vol. 12, pp. 176, 208-9 and 370.

By an Act of the General Assembly of South Carolina, passed December 19, 1855, entitled "An Act to amend the charter of the Northeastern Railroad Company, and for other purposes," it was enacted by the first Section thereof as follows:

"SEC. 1. That the stock of the Northeastern Railroad Company, and the real estate that it now owns or may hereafter acquire, which is connected with or subservient to the works authorized in the charter of the said company, shall be, and the same is hereby, exempted from all taxation during the continuance of the present charter of the said company."

Statutes at Large, Vol. 12, p. 407.

This latter Act imposed no service, duties or remunerative conditions on the corporation as a consideration for such exemption from taxation; nor did it except, in express terms, the charter of the company from the provisions of the 41st Section of the Act of 1841, above recited.

Since the passage of the Act granting this exemption (Act of 1855,) the General Assembly has passed an Act entitled "An Act to afford further aid to the Northeastern Railroad Company," passed December 21, 1858; and an Act entitled "An Act to authorize the Northeastern Railroad Company to continue the use and present location of their track, near the city of Charleston," &c., passed December 21, 1858.
Statutes at Large, Vol. 12, pp. 728, 729.

Neither of these latter Acts contain any exception of the charter of the company from the provisions of the 41st Section of the Act of 1841.

The appellants now submit:

First. That the charter of the Northeastern Railroad Company has been, at all times, by express reservation, subject to amendment, alteration, or repeal, by the legislative authority.

Second. That the exemption from taxation contained in the first Section of the Act of 1855, above recited, is in the nature of a revocable privilege.

Third. That that privilege has been revoked and that exemption repealed by the legislative authority of the State.

The appellants again recur to the principle, too well established to require argument or authorities, that public grants and charters of corporations are to be construed strictly against the corporation and in favor of the public, and that nothing passes except what is given in clear and explicit terms.

Rice vs. *Railroad Co.*, 1 Black, 380, and cases there cited.

"The rule of construction in such a case is, that the grant of privileges and exemptions to a corporation are to be strictly construed against the corporators, and in favor of the public; that nothing passed but what has been granted in clear and explicit terms; and that neither the right of taxation, nor any other power of sovereignty, will be held by this Court to have been surrendered, unless such surrender has been expressed in terms too plain to be mistaken."

Jefferson Branch Bank vs. *Skelly*, 1 Black,, 446.

The charter of incorporation of the Northeastern Railroad Company being, by its own terms, subject to the Legislative authority of amendment, alteration, or repeal any further grant to such company or amendment of its charter, does not take away this right, unless it is expressly stated in the Act conferring the grant. No such exception having been made in the Act of 1855, the power of the Legislature over the charter of the company remains as originally fixed, and no Act of the General Assembly altering or amending it, passed in conformity to the reserved rights of the State, can be in violation of the Constitution of the State, or of the United States, as impairing the obligation of a contract.

The 41st Section of the Act of 1841 being of force at the time of the possage of the Act incorporating the Northeastern Railroad Company, and the said Act not excepting the

charter of the company from the provisions of the said Section, it follows that the company and the stockholders therein, accepted the privileges and powers granted them with a full knowledge of the paramount authority of the Legislature to rescind the contract existing between them wholly or in part during the period of their corporate existence.

In the case of the *City of Roxbury* vs. *The Boston and Providence Railroad Company*, 6 Cushing, 424, the effect of a general reservation of power to amend, alter or repeal, at pleasure, all charters or Acts of incorporation came under decision.

The Boston and Providence Railroad Company accepted an Act of incorporation passed after an Act by which the Legislature of Massachusetts reserved power to alter, amend or repeal, at pleasure, all Acts of incorporation which should be subsequently passed.

The Court say: "The defendants, having accepted their charter, after the above Act, (Act reserving power to alter, &c.,) and whilst it was in force, took the charter subject to those provisions, and must be bound by any reasonable amendment or alteration which the Legislature might thereafter make."

The same question arose and was decided in the case of the *Mass. General Hospital* vs. *State Mutual Life Assurance Co.*, 4 Gray., 227.

In that case the defendants, by their Act of incorporation, passed in 1844, were required to pay, annually, to the plaintiffs "one third of their net profits, if any."

The Act already referred to was in force, reserving to the Legislature the power to alter, &c., all Acts of incorporation subsequently granted.

In 1846 the Legislature passed an Act to define what should be included by the phrase "net profits." The defend-

ants insisted that the latter Act was unconstitutional, because it violated vested rights.

The Court say: "All Acts of incorporation passed since March 11, 1831, which contain no express provision limiting their duration, are, by the provisions of the statutes of the commonwealth existing from that period to the present, subject to alteration, amendment or repeal. The Act incorporating the defendants was passed in the year 1844, long after the enactment of the Revised Statutes, and was, of course, accepted by the corporators, subject to the provisions of those statutes. This seems to put at rest all further question as to the constitutionality of the Act of 1846; and this being so, the defendants are bound by it, and must govern themselves accordingly."

See, also, *Crease* vs. *Babcock*, 23 Pick., 341.

Commonwealth v. Essex Co. 13 Gray. 239
do v. Holyoke Co. 104 Mass. 446

In *Bailey* vs. *Hollister*, 26 N. Y., 112, it was held that a member of a corporation, whose charter the Legislature has reserved the power to repeal or modify, holds its stock subject to such liability as may attach to him in consequence of an extension or renewal of the charter, without his application or consent. In this case, the estate which held the stock of a corporation was held liable to any liabilities which the Legislature might attach to the same stock and its holder, as the stock-holder's assent was not necessary to the attaching of his liability; and attaching it by law without his consent was not in violation of the Constitution of the United States.

In Angell and Ames on Corporations, page 769, it is said: "The General Statutes of a State apply to a corporation, unless they are expressly repealed by the charter of that corporation."

The Northeastern Railway Company had, by the Act of 1851, already contracted with the State, for a sufficient consideration, for certain rights, powers and privileges, which were to last for fifty years, subject to the reserved power of the Legislature of alteration, amendment or repeal, under the 41st Section of the Act of 1841. Upon such consideration, the company proceeded to build the railroads authorized to be built by this charter, and to exercise the powers and privileges incident to their existence. Four years after the consummation of this contract, the State gives, of its own accord, a new privilege to the Company not contemplated in the original charter, and without exacting a single new service or duty. No public benefit was to be derived from this grant, and no trouble or prejudice was imposed on the Company. On the contrary, it released the corporation from a public burden, which is imposed on all natural persons holding property within its limits.

In no just sense can such a privilege be construed as a contract irrevocable by the State. Had this exemption from taxation for the period for which the Company was incorporated, been a part of the original charter of incorporation, or had new duties been imposed upon them in consequence of this exemption, there might be reason for holding such a grant as a contract irrevocable by the State without the consent of the Company.

"Such an exemption as would deprive the Legislature of the power of taxation, could only be claimed on the ground that it did, *at the time of the grant*, form a condition or else a consideration of such grant, for it is only to that extent that legislative grants have been considered contracts within the meaning of the United States Constitution, prohibiting the State from passing any law impairing the obligation of contracts." *Herricks* vs. *Rutland*, 13 Ver., 530.

The decisions in regard to the rights of the Legislature to grant perpetual exemption from taxation to corporations and property, the title to which is derived from the State, "do not affect to justify even this express exemption from taxation, being held inviolable, except upon the ground that it forms a part of the value of the grant, for which the State received or stipulated for a consideration."

Thorpe vs. *Rutland and Burlington R. R. Co.*. 27 Ver., 146.

The company could not claim that the privilege is irrevocable, because of the performance of *past* services rendered by them.

"The rule of law seems to be now well settled that the past performance of services constitutes no consideration even for an express promise."

Dearborne vs. *Bowman*, 3 Met., 153: see, also, *Shepard* vs. *Young*, 8 Gray, 153; *Nesbit* vs. *Railroad Company*, 2 Spears, 697.

"It is only when the party making the promise gains something, or he to whom it is made loses something, that the law gives the promise validity."

Mills vs. *Wyman*, 3 Pick., 211.

It has before been shown that the privilege is not a contract because of *future* services to be performed by the corporation because the Act of 1855 requires no service or duty whatever from them.

The exemption from taxation granted by the Act of 1855, to the Northeastern Railroad Company, has been at all times, therefore, a revocable privilege, and not an absolute and final contract.

There is another view which also sustains the right of the State to repeal the exemption granted in the Act of 1855.

The privilege contained in the Act of 1855 is in the nature of a gratuity that might be revoked. The concession of the Legislature was spontaneous, and no service or duty, or other remunerative condition, was imposed upon the corporation. Such concession belongs to the class of laws denominated *privilegia favorabilia*. They exist *bene placitum*, and may be revoked at the pleasure of the sovereign.

See *Rector, &c., of Christ Church, Philadelphia*, vs. *The County of Philadelphia*, 24 *How.*, 300, and cases there cited.

That it was a gratuity appears from the fact that it was given by the State without any expectation of remuneration, or without requiring the performance of new duties on the part of the company. There is nothing, therefore, on which an express or implied contract can rest, to bind the State, even if the original charter was excepted from the provisions of the 41st Section of the Act of 1841.

The grant of such privileges as the Act of 1855 conferred on the Northeastern Railroad Company, having been given without requiring anything from the company in return, simply meant that they might be enjoyed for the full period for which the company was incorporated, unless the State, before the expiration of such period, should see proper to revoke them. The said Act, as well as the Act of Incorporation, was subject to amendment, alteration or repeal by the legislative authority, under the provisions of the 41st Section of the Act of 1841, and being so subject to the paramount authority of the Legislature, the provisions of the Constitution of the State, already quoted in the case of the South Carolina Railroad Company, and the first Section of the Act of 1868, already quoted, were an exercise of the reserved right of the State, and not repugnant to the Constitution of the United States.

The Cheraw and Darlington Railroad Company was chartered by an Act of the General Assembly of the State of South Carolina, passed December 19, 1849, entitled "An Act to charter the Cheraw and Darlington Railroad Company."

This Act, after authorizing the formation of the company, and the raising of the capital stock, provides, in Section 5, as follows:

"SEC. 5. That, for the purpose of organizing and forming this company, all the powers conferred by the charter of the Wilmington and Manchester Railroad Company on the Commissioners therein named, shall be vested in the Commissioners hereby appointed in the town of Cheraw; and all the powers, rights and privileges granted by the charter of the Wilmington and Manchester Railroad Company to that company shall be, and are hereby, granted to the Cheraw Railroad Company, and subject to the conditions therein contained, except as to the amount of the capital stock, the amount of shares, and the sum necessary to authorize organization, and except in so far as the special provisions of this Act may otherwise require the same to be modified or varied."

Statutes at Large, Vol. 11, p. 583.

The charter of the Wilmington and Manchester Railroad Company contained no exemption from taxation.

Statutes at Large, Vol. 11, p. 381.

In 1863, by an Act entitled "An Act to alter and amend the charter of the Cheraw and Darlington Railroad Company," it was enacted, in Section 1, as follows:

"SECTION 1. That Section 5 of an Act entitled 'An Act to charter the Cheraw and Darlington Railroad Company,' ratified the 19th day of December, in the year of our Lord one thousand eight hundred and forty-nine, be amended so as to read as follows, to wit: 'That all the powers, rights and privileges granted by the charter of the Northeastern Railroad Company are hereby granted to the Cheraw and Darlington Railroad Company, and subject to the conditions therein contained, except as to the amount of capital stock, and except in so far as the special provisions of this Act may otherwise require the same to be modified or varied.'"

Statutes at Large, Vol. 13, p. 219.

As has already been shown, the charter of the Northeastern Railroad Company is contained in an Act entitled "An Act to incorporate the Northeastern Railroad Company," passed December 16, 1851.

Statutes at Large, Vol. 12, p. 129.

That Act contained no exemption from taxation.

It is contended, however, by the appellees, that the Act of 1855, entitled "An Act to amend the charter of the Northeastern Railroad Company, and for other purposes," (*Statutes at Large*, Vol. 12, p. 407,) is, by the Act of 1863, above recited, made a part of the charter of the Cheraw and Darlington Railroad Company, and hence that the exemption from taxation, granted by the Act of 1863, is extended to the Cheraw and Darlingt n Railroad Company.

The appellants submit that the plain intent of the Legislature was to confer upon the Cheraw and Darlington Railroad Company, only the powers, rights and privileges granted by the Act of incorporation of the Northeastern Railroad Com-

pany, to wit: The Act of 1851, entitled "An Act to incorporate the Northeastern Railroad Company;" and that it was not intended to include in that grant the subsequent privilege granted to the Northeastern Railroad Company by the Act of 1855.

First. The appellants recur, as before, to the principle that an exemption from taxation is never implied, and that the Courts will not adopt a doubtful construction of Statutes in order to sustain such an exemption. Nothing less than a clear intention on the part of the Legislature, expressed in terms which admit no other reasonable construction, will suffice to sustain a privilege so valuable and so far-reaching.

When in 1849 the charter of the Cheraw and Darlington Railroad Company was granted, no exemption from taxation was contained in it.

The 5th Section of that Act, already quoted, conferred only the "powers, rights and privileges" contained in the charter of the Wilmington and Manchester Railroad Company, which latter charter contained no exemption from taxation.

It is obvious, therefore, that it was not the original intention of the Legislature to extend this privilege to the Cheraw and Darlington Railroad Company.

But the said 5th Section of the Act of 1849 declares that, "*for the purpose of organizing and forming this company*, all the powers, &c., shall be vested in the Commissioners hereby appointed in the town of Cheraw; and all the powers, &c., granted by the charter of the Wilmington and Manchester Railroad Company, shall be, and are hereby, granted to the Cheraw and Darlington Railroad Company," &c.

Now the purpose of the grant, as thus stated, indicates, beyond doubt, the proper construction of the Section.

The charter of the Wilmington and Manchester Railroad Company contained the usual grant of powers and privileges necessary to enable a railroad company to organize itself, to acquire its property, and to proceed to discharge the purposes for which it had been incorporated. These powers were granted by the Act of 1849 to the Cheraw and Darlington Railroad Company.

For various reasons the Cheraw and Darlington Railroad Company did not build their road prior to 1863; and, in that year, the Act of 1849 was amended in its 5th Section, "so as to read as follows, to wit: That all the powers, rights and privileges granted by the charter of the Northeastern Railroad Company are hereby granted to the Cheraw and Darlington Railroad Company."

The powers, rights and privileges granted by the charter of the Northeastern Railroad Company,—meaning thereby the Act of 1851 incorporating that company,—were different from those granted by the charter of the Wilmington and Manchester Railroad Company, and the Legislature evidently intended to extend to the Cheraw and Darlington Railroad Company the superior advantages contained in the charter of the Northeastern Railroad Company—meaning thereby the Act of 1851, incorporating that company,—but that they intended, in this general way, to grant the extraordinary exemption contained in the amendatory Act of 1855, (*Statutes at Large*, Vol. 12, p. 407,) is more than can reasonably be maintained. The words "granted by the charter of the Northeastern Railroad Company," plainly means the general Act of Incorporation, namely, the Act of 1851. (*Statutes at Large*, Vol. 12, page 129.)

This view is strengthened by the consideration of the fact that the Act of 1863, under which the present claim of ex-

emption from taxation is made, contains a final Section which excepts the charter of the Cheraw and Darlington Railroad Company from the provisions of the 41st Section of the Act of 1841; thus depriving the General Assembly of all power of amendment, alteration or repeal.

To hold, therefore, that the 1st Section of the Act of 1863 extends to the Cheraw and Darlington Railroad Company the exemption from taxation granted to the Northeastern Railroad Company by the amendatory Act of 1855, is to hold that that exemption is irrepealable and unalterable; thus conferring on the Cheraw and Darlington Railroad Company a far higher privilege than that possessed by the Northeastern Railroad Company, since the latter company is nowhere excepted from the provisions of the said 41st Section of the Act of 1841.

Such a conclusion is to extend, without express words, and strictly by implication, to the Cheraw and Darlington Railroad Company, a far higher privilege than was possessed by the Northeastern Railroad Company, even under the Act of 1855.

Another consideration which confirms the view now taken, is derived from an examination of the first Section of the Act of 1855, which contains the exemption from taxation of the Northeastern Railroad Company.

That Section grants the exemption "during the continuance of the present charter of the said company."

The Act of 1851, which contains the charter of the company, declares, in Section 10, "That this Act shall be in force for the term of fifty years from the ratification thereof, and shall be deemed a public Act: *Provided*, That the work, for the execution of which the said company is incorporated, shall be commenced within two years from the

first day of January next, and the main track of the said railroad be completed within eight years thereafter."

The utmost limit, therefore, of the exemption from taxation of the Northeastern Railroad Company, is fifty years from the 16th December, 1851.

The charter of the Cheraw and Darlington Railroad Company contains no limitation of its corporate existence, and hence it is apparent that the Legislature did not intend, by the 1st Section of the Act of 1863, to extend the exemption from taxation, contained in the Act of 1855, to the Cheraw and Darlington Railroad Company, since, in that case, it must be conceded that they would have clearly made known their intention as to whether the exemption was to continue during the continuance of the charter of the Northeastern Railroad Company, namely: for fifty years from December, 1851, or during the continuance of the charter of the Cheraw and Darlington Railroad Company, namely: indefinitely or in perpetuity.

If, therefore, the 1st Section of the Act of 1863 is held to confer on the Cheraw and Darlington Railroad Company, the exemption from taxation expressed in the Act of 1855, as conferred on the Northeastern Railroad Company, the result would seem to be that by the simple, and to say the least, ambiguous reference contained in the first Section of the Act of 1863, a perpetual exemption from taxation was granted to the Cheraw and Darlington Railroad Company, since the charter of that company is not subject to repeal or alteration by the legislative authority.

It is confidently submitted, by the appellants, that no rule of construction, heretofore sanctioned by this Court, will support such a conclusion.

If the 1st Section of the Act of 1863 is construed to refer only to the charter of the Northeastern Railroad Com-

pany as contained in the Act of 1851, entitled "An Act to incorporate the Northeastern Railroad Company," then the Act of 1863 grants no exemption from taxation to the Cheraw and Darlington Railroad Company; and the Act of 1868, providing for the assessment and taxation of property in the State of South Carolina, is a constitutional exercise of legislative power, so far as it affects the property of the Cheraw and Darlington Railroad Company.

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